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DOCTORAL THESIS

Early interventions: An analysis of States' due diligence obligations to prevent intimate partner violence under international human rights law.

Obreja, Leyla-Denisa

Award date:
2019

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Early interventions: An analysis of States' due diligence obligations to prevent intimate partner violence under international human rights law

LEYLA-DENISA OBREJA

DOCTORAL THESIS, FACULTY OF LAW, BOND UNIVERSITY

JULY 2018

Submitted in total fulfilment of the requirements of the degree of Doctor of Philosophy

Principal Supervisor: Dr. Rachael Field

Associate supervisors: Assistant Prof. Jodie O'Leary and Dr. Darren O'Donovan

This research was supported by an Australian Government Research Training Program Scholarship.

Abstract

This thesis seeks to address the challenge of intimate partner violence (IPV), a threat to the enjoyment of individual human rights, by expanding the analysis of State preventative obligations beyond a criminal justice model. This is achieved by approaching IPV through the international human rights system and investigating the emerging due diligence doctrine that expands the dichotomy of State obligations. Due diligence requires broader State interventions, not solely criminal and punitive in nature but measures tackling individual, relational and societal risk factors associated with IPV. The thesis elaborates on the meaning of the 5 Ps that constitute the due diligence framework, namely *Prevent, Protect, Prosecute, Punish and Provision of Redress*; and examines the content of due diligence procedures in IPV, as well as the difference between State interventions and State interferences in private and family life. Throughout the thesis, many innovative aspects are discussed, such as reproductive coercion as a new form of IPV, the conceptualization of teen dating violence as a human rights issue, emerging intersectional aspects in IPV and the importance of a transformative aim in due diligence interventions. This research critically contributes to the development of the due diligence doctrine as international obligations of conduct and establishes concrete measures that States can adopt and implement to prevent intimate partner violence. The thesis establishes a detailed guidance for State compliance with international norms related to IPV and informs all stakeholders of the benefits that a due diligence approach can provide in the fight against partner violence.

Keywords

intimate partner violence; due diligence; human rights obligations; violence against women; prevention; accountability; international law

Declaration by author

This thesis is submitted to Bond University (Faculty of Law) in fulfilment of the requirements of the degree of Doctor of Philosophy (PhD). This thesis represents my own original work towards this research degree and to the best of my knowledge and belief, contains no material that has previously been submitted for a degree or diploma at this University or any other institution, except where due acknowledgement is made.

LEYLA-DENISA OBREJA

Research outputs arising from this thesis

:

Obreja, L.D., 2019. Intimate partner violence in childhood: human rights implications in multiple exposure scenarios, *International Journal of Children's Rights*.

Obreja, L.D., 2019. Human rights law and intimate partner violence: towards an intersectional development of due diligence obligations, *Nordic Journal of Human Rights*.

Acknowledgements

Completing my PhD has been a transformative and deeply humbling experience. Across all stages of this work, I have been guided by a sense of responsibility towards those who suffer from intimate partner violence all over the world. Above all, this thesis is dedicated to the silent victims and survivors of intimate violence in the hope that my thesis contributes, in whatever capacity, to someday eradicating or alleviating this form of human suffering.

The work gathered here could not have been possible without the support of the Australian Government, Bond University, its research staff and my brilliant team of supervisors. Thank you, Dr. Rachael Field for being the kindest and most nurturing mentor, helping me through professional and personal hurdles and having my back every step of the way. I am also thankful to Dr. Darren O'Donovan and Assistant Prof. Jodie O'Leary for supporting me and uplifting me through my confirmation as well as throughout my candidature. By the miracle of collaboration, friendship and guidance in times of strife, the three of you have assisted me in overcoming all obstacles in this journey, and for that I will be forever grateful.

I am also appreciative of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Sweden and the Norwegian Centre for Human Rights for opening their doors and allowing me to seek different perspectives, practices and access invaluable resources in my time as a visiting researcher. I have had the privilege to receive feedback and advice from amazing individuals and esteemed scholars, such as Alejandro Fuentes, Maria Green, Thomas Gammeltoft-Hansen and Radu Mares. A massive thank you to Tonya Roberts for all the help and support you have given me in these 3 years; and to Rick Bigwood for providing me the chance to come to Bond and be a part of this loving and innovative community.

Finally, to the people closest to my heart, my parents, my grandparents, my aunt and my friends: I love you and I am privileged to be in your lives. All of you, in different ways and forms, have inspired me to fight for my ideals, to hold on to my integrity, to believe in myself in the darkest of times and to want to contribute to the advancement of human rights and justice. To my father, you have my deepest admiration for fighting a battle for the last 7 years, with nothing but dignity, honour and character. You lead by example and inspire me to guide all my actions by the values of compassion, respect and fairness.

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Abbreviations

BDPA- Beijing Declaration and Platform for Action
CAT – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBT- Cognitive Behavioural Therapy
CDC- United States, Centre for Disease Control and Prevention
CEDAW - Convention on the Elimination of All forms of Discrimination against Women
CRC – Convention on the Rights of the Child
CRPD - Convention on the Rights of Persons with Disabilities
DV – Domestic Violence
DEVAW - Declaration on the Elimination of Violence against Women
ECHR - European Convention on Human Rights
ECtHR- European Court of Human Rights
EIGE – European Institute for Gender Equality
EU – European Union
GA- United Nations General Assembly
GC - General Comment (United Nations Human Rights body)
GR - General Recommendation (United Nations Human Rights body)
HRC - Human Rights Committee
ICCPR - International Covenant on Civil and Political Rights
ICESCR - International Covenant on Economic, Social and Cultural
ICJ – International Court of Justice
IHRL - International Human Rights Law
ILA- International Law Association
ILC- International Law Commission
IPV – Intimate Partner Violence
LGBT - Lesbian, Gay, Bisexual, and Transgender
OHCHR- Office of the United Nations High Commissioner for Human Rights
SRVAW- Special Rapporteur for Violence against Women
TDV- Teen Dating Violence
TDV- Teen dating violence
UDHR - Universal Declaration of Human Rights
UN - United Nations
UNDP - United Nations Development Programme
UNICEF - United Nations International Children's Emergency Fund
UNODC- United Nations Office on Drugs and Crime
US/ USA - United States of America
VAW – Violence against Women
VCLT – Vienna Convention on the Law of Treaties
WHO – World Health Organization

Chapter I: Thesis outline

1. Introduction: a human rights approach to intimate partner violence
2. Research questions and methodology
3. Assumptions and limitations of the research
4. Aims of the research and contribution to the field
5. Thesis Structure

1. Introduction: a human rights approach to intimate partner violence

The present thesis explores intimate partner violence (IPV) as a human rights issue, focusing in particular on the dimension of States' due diligence obligations to prevent it. In evaluating how international human rights law approaches the conceptualisation of IPV, the thesis considers how various theoretical understandings of the concept can be reconciled to deliver a definition applicable to all individuals. An understanding of the causes and nature of IPV, is in turn essential to ensuring State obligations to prevent IPV deliver the best outcomes for individuals and broader communities.

In the pursuit of reconciling various understandings of IPV, the thesis is guided by a social-ecology approach to establish a connection between (a) the factors and contexts of individuals involved in IPV and (b) the international human rights system. The social-ecology approach in IPV, discussed in the methodology section of the present chapter is considered the most effective and thus favoured, due to the possibility of linking individual human rights to multiple levels of risk factors associated with IPV. This allows for the consideration of the normative content of due diligence obligations to prevent IPV contextually, with a specific reflection on the factors, circumstances and features of IPV. An ecological understanding allows the observation of the transformation of gender dynamics at an individual, relational and societal level.¹ A social-ecology understanding of IPV also appears to be the most compatible with a human rights-based approach to IPV that is

¹ See Heise, L.L., 1998. Violence against women: an integrated, ecological framework. *Violence against women*, 4(3), pp.262-290; Jewkes, R., Levin, J. and Penn-Kekana, L., 2002. Risk factors for domestic violence: findings from a South African cross-sectional study. *Social science & medicine*, 55(9), pp.1603-1617; Michau, L., Horn, J., Bank, A., Dutt, M. and Zimmerman, C., 2015. Prevention of violence against women and girls: lessons from practice. *The Lancet*, 385(9978), pp.1672-1684; Terry, M.S., 2014. Applying the social ecological model to violence against women with disabilities. *Journal of Womens Health Care*, pp.2167-0420.

individual-centric, promotes gender equality within State interventions, favours incorporating the individual's risk factors and needs into responses and fosters the individual's confidence in State interventions. Due diligence represents a framework for State conduct at the core of which lies the importance of assessing risks and future impacts to prevent violations of human rights. This idea is thoroughly examined in Chapter VI of the thesis. On the other hand, a risk-based understanding of partner violence allows for the formulation of the concept in a manner compatible with and visibly connected to the due diligence framework that targets precisely the prevention of IPV.

Moreover, a human rights-based approach represents a “conceptual framework for the process of human development” that relies on human rights principles; a framework predominantly used in the area of sustainable development.² Endorsed by United Nations agencies as well as national human rights institutions, a human rights approach demands that the following principles are considered in the analysis and prevention of human rights issues: universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination; participation; transparency; accountability and the rule of law.³ The PANEL principles (participation, accountability, non-discrimination, empowerment and legality) have been applied to human rights such as the right to physical and mental health⁴ and will be used to consider various aspects of IPV throughout the thesis as well as in the formulation of recommendations for the prevention of IPV in the last chapter.

In the context of IPV, the principles of universality and inalienability suggest that the rights of those experiencing this phenomenon, as victims, perpetrators or witnesses cannot be alienated by any third agent; and that all individuals have the same rights regardless of any other factor except for their human condition.⁵ The indivisibility of human rights suggests that political and civil rights on one hand and economic, social and cultural rights on the

² United Nations Office of the High Commissioner for Human Rights, 2006. *Frequently asked questions on a human rights-based approach to development cooperation*. United Nations Publications at 15.

³ UNICEF, 2004. *The human rights-based approach: Statement of common understanding. State of the World's Children (Annex B)*, viewed June 2017, <https://www.unicef.org/sowc04/files/AnnexB.pdf>. See Haugen, H.M., 2011. Human Rights Principles-Can They Be Applied to Improve the Realization of Social Human Rights. *Max Planck YBUNL*, 15, at 419. Haugen identifies seven human rights principles in accordance with the article 31 of the VCLT; these principles are the equivalent of obligations of conduct (due diligence).

⁴ NHS Health Scotland, n.d. *The right to health*, viewed June 2017, <http://www.healthscotland.scot/health-inequalities/the-right-to-health>; World Health Organization, 2015. *World report on ageing and health*. World Health Organization.

⁵ O'Manique, J., 1990. Universal and inalienable rights: A search for foundations. *Hum. Rts. Q.*, 12, at 465.

other, are connected in a way that breaching one will affect the enjoyment of another right.⁶ Both categories of rights need to be accorded equal importance and attention. For IPV this means that guarantying the right to health, housing and other social-economic rights that will be discussed in Chapters III and IV, needs to become a priority for States fighting to eradicate IPV.

In order to do so, States must first recognize the importance of this category of rights for preventing IPV and learn how to adapt the implementation of these rights to an individual's needs. The concepts of inter-dependence and inter-relatedness of human rights are similar to the concept of indivisibility and require a “mutually reinforcing dynamic between different categories of rights”.⁷ The principle of non-discrimination, present in Article 2 of the UDHR,⁸ demands that all individuals enjoy their rights in the same way without any distinction based on “race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards”.⁹ For IPV, perhaps this is the most important principle, due to the fact that gender discrimination and gender inequality play an important role in understanding the phenomenon. The idea of IPV being regarded by the international human rights system as violence against women, and the link between gender-based violence and discrimination, is developed in Chapter III.

The human rights principle of participation signifies that individuals have a right to participate and have a voice in decisions regarding the protection of their rights; and that States must encourage a dialogue between institutions mandated with human rights protection and the civil society.¹⁰ For IPV, this principle demands a continued State action involving all stakeholders of IPV in decision-making processes and in the adoption of relevant policies. Participation also requires that States, through capacity-building, empower the civil society to fight against IPV by allocating the necessary resources to individuals and groups. Community

⁶ National Economic and Social Rights Initiative, n.d. *What are the Basic Principles of the Human Rights Framework*, viewed October 2017, <https://www.nesri.org/programs/what-are-the-basic-principles-of-the-human-rights-framework>.

⁷ Quane, H., 2012. A further dimension to the interdependence and indivisibility of human rights: Recent developments concerning the rights of indigenous peoples. *Harv. Hum. Rts. J.*, 25, at 49.

⁸ *Universal Declaration of Human Rights* (UDHR) 1948, (resolution 217 A), adopted 10 December 1948.

⁹ United Nations Populations Fund, n.d. *Human Rights Principles*, viewed October 2017, <http://www.unfpa.org/resources/human-rights-principles>.

¹⁰ National Economic and Social Rights Initiative, n.d. *What are the Basic Principles of the Human Rights Framework*, viewed October 2017, <https://www.nesri.org/programs/what-are-the-basic-principles-of-the-human-rights-framework>.

mobilization paired with additional interventions has been praised to significantly lower the prevalence of IPV.¹¹ Both of these concepts will be developed in Chapters V and VI.

The human rights principle of transparency consists of States providing right holders with relevant information regarding the ways in which their rights are protected and regarding legislative developments that might concern them. For IPV this might include “social mobilisation and involvement, respect for, and priorities of rights, and the creation of a culture of human rights”.¹² It also requires that institutions and agents involved in IPV prevention are not corrupt and function effectively; as corruption and transparency are intimately linked.¹³ Finally, accountability and the rule of law are significant elements of the human rights framework and consequently, important elements for a human rights-based approach. Accountability translates into measures put into motion by States so that individuals can hold institutions accountable for violations of human rights.¹⁴ In the context of IPV, accountability must be extended to the acts of non-State actors if and when these acts are attributable to the State:

Eliminating [i.e. IPV] requires a multi-stakeholder approach to accountability that includes monitoring State and non-State actors for compliance and including them as direct duty bearers for prevention, protection and change.¹⁵

Accountability is one of the main elements of human rights due diligence and will be further analysed in Chapters V and VI. Finally, the rule of law principle can be regarded as the glue that holds all other principles together and requires States to organize their governance, judiciary and legislative fields in accordance with the principles of fairness and supremacy of human rights:

¹¹ World Bank Group, The Global Women’s Institute, 2016. *Community-Based Approaches to Intimate Partner Violence, A review of evidence and essential steps to adaptation*, viewed October 2017, <http://documents.worldbank.org/curated/en/907511467996712161/pdf/AUS16688-REVISED-Community-Programs-SinglePages.pdf>.

¹² Goonesekere, S., n.d.. *A rights-based approach to realizing gender equality*, viewed November 2017, <http://www.un.org/womenwatch/daw/news/savitri.htm>

¹³ United Nations Human Rights, Office of the High Commissioner, Good Governance and Human Rights, n.d., *More information on the principles of accountability, transparency and good governance*, viewed October 2017, <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

¹⁴ *Supra*, note 6

¹⁵ Manjoo, R., 2013. State Responsibility to act with Due Diligence in the Elimination of Violence against Women. *International Human Rights Law Review*, 2(2), pp.240-265, at 265.

It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.¹⁶

Ultimately, a human rights approach to any form of societal violence first implies an identification of how certain State attitudes and conducts encourage, fail to condone or simply tolerate the perpetration of human rights violations; and an identification of the specific rights at stake. A human rights approach to IPV consists of formulating a hypothesis that IPV represents a human rights violation and that individuals have a right to be free from violence, as well as a demonstration of how State conducts can contribute or fail to prevent this form of violence. As mentioned earlier, a human rights approach is also guided by an analytical pattern of observation of how civil and political rights interact with economic, social and cultural rights.¹⁷ At the same time, this approach must underline the experiences of individuals and make them central to a preventative analysis:

[...] Agency is critical to a human rights approach. In order to address conditions that create vulnerability, a human rights approach must seek to give voice to those who are vulnerable and enable them decision-making scope to change their conditions of vulnerability. This model is considered ably different from those that frame rights as simply standards for state conduct, since it moves away from notions of benevolent handouts by state or third parties to ameliorate suffering of passive recipients of assistance.¹⁸

¹⁶ United Nations Security Council, 2004. *The rule of law and transitional justice in conflict and post-conflict societies*. Report of the Secretary-General, S/2004/616.

¹⁷ London, L., 2008. What is a human-rights based approach to health and does it matter?, *Health and Human Rights*, pp.65-80.

¹⁸ *id.*

The thesis integrates individuals' experiences and accounts of IPV and engages with multiple cases, both at a national and international level. Any analysis guided by a human rights approach must be performed on three levels: (a) identifying the right holder/s, (b) identifying the duty bearer and (c) determining the content and limits of a right.¹⁹ Following this sequence allows for an enhanced promotion of State accountability, which represents the core element of due diligence. All these considerations are central to the thesis. Finally, any human rights approach must recognize that systems often fail and human rights violations do occur and strive to underline the role of redress and mobilization, by asking what States must do for those who were harmed and how can communities and groups work together to prevent, in this case, IPV.²⁰ The thesis considers both of these questions at large, predominantly in the last two chapters.

Despite following a human rights approach and being guided by a social-ecology explanation of IPV, the thesis is informed by multiple studies related to the nature of IPV and reviews the main theoretical approaches for defining IPV. The literature concerned with what IPV is and how, why and when it occurs has been analysed to ensure that the content of due diligence obligations to prevent IPV is effectively presented and matches the realities of this phenomenon.

This research critically contributes to the development of the due diligence doctrine as international obligations of conduct and establishes concrete measures that States can adopt and implement to prevent IPV; while also referencing what States should not do, to avoid interfering with certain human rights. The need for this research is dictated by the gaps in the due diligence related literature and, most importantly, the alarming prevalence and detrimental consequences IPV has all around the world. The thesis operates under certain assumptions, which will be presented below in this introductory chapter. This chapter also contains important information related to the limitations of this research, its aims and contribution to the legal field, the methods used to analyse the hypotheses and the thesis structure.

¹⁹ *id.*

²⁰ *id.*

2. Research questions and methodology

2.1 Research question

The central research question of this thesis critically analyses the normative content, scope and limitations of due diligence obligations of States (*5 Ps: Prevent, Protect, Prosecute, Punish, Provision of redress*)²¹ to effectively prevent IPV and how these obligations translate into positive action to combat individual, relational and societal risk-factors associated with the phenomenon. Informed by recent decisions of international human rights institutions, this study employs a holistic approach to IPV, bridging the public and private spheres and the limiting binary of sanctioning and preventive models.

Recently, the Committee on the Elimination of Discrimination against Women updated its General Recommendation No. 19 related to gender-based violence. The Committee has given priority to the discussion surrounding State responsibility for acts and omissions of non-State actors to prevent gender-based violence showing that due diligence obligations are a major point on the current human rights agenda and its development. The new General Recommendation 35 of the CEDAW Committee deems the protection against violence against women and implicitly IPV to have crystalized into a principle of international customary law and reinforces the need for States to be accountable for the acts of private individuals through due diligence obligations.²² In this recent Recommendation, the CEDAW Committee underlines that in the past 25 years, State practice, including non-member States, has revealed significant advances in the field of domestic violence prevention legislation. These advances include the adoption of new forms of national legislation, the acceptance of CEDAW's recommendations or the adoption and endorsement of important international guiding documents for the implementation of the CEDAW. The same interest has been shown within the UN Human Rights Committee, that is currently working on drafting the

²¹ Aziz Z.A., Moussa J., 2014. *Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women*, viewed October 2016, <http://www.duediligenceproject.org/ewExternalFiles/Due%20Diligence%20Framework%20Report%20Z.pdf>

²² United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), 2017. *General Recommendation No. 35, Gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35, para. 2.

upcoming General Comment 36 on the right to life, expected to be adopted soon.²³ This document contains important due diligence obligations that carry great relevance for IPV: the possibility of jeopardizing the enjoyment of the right to life by means of omissions or acts that cause premature death and the obligation of States to prevent deprivations of life caused by private individuals.

Consequently, an essential aspect of this thesis is the investigation of the traditional dichotomy of positive and negative obligations of States,²⁴ and how these obligations are rarely interpreted to conceptualize IPV as a multidimensional problem. IPV is approached as an occurrence influenced not only by the actions of private actors, but rather shaped by broader issues of inequality, poverty or by atypical relationship dynamics. As French and Stephens explain, the traditional dichotomy of State obligations and the tripartite model (for economic, social and cultural rights), are traditional models that focus on results, as opposed to due diligence obligations that focus on a State's conduct for obtaining certain societal outcomes.²⁵

The research question implies re-conceptualizing IPV prevention as a matter of human rights law and observing risk factors in the context of human rights. For example, risk factors such as gender inequitable social and legal norms that increase victimization risks are considered to originate from breaches of women's rights protected by the CEDAW. Risk factors such as exposure to violence between parents and sexual abuse during childhood can be traced back to violations of the rights contained in the CRC. Consequently, due diligence approaches are formulated in the thesis as interventions for the fulfilment of human rights, as preventative State actions aimed at combating the factors associated with IPV perpetration. Beyond these intersectional aspects and IPV's impact on those suffering from multiple vulnerabilities, the thesis will demonstrate that IPV can represent a violation of the right to life and/or prohibition of torture. To this end, the thesis analyses the relevant provisions found in the International Covenant on Civil and Political Rights (Art. 6; Art. 7) and Convention against Torture (Art. 1) and the interpretations of the Human Rights Committee and Committee

²³ United Nations Human Rights Committee, n.d. *Draft General Comment 36*, CCPR/C/GC/R.36/Rev.2., para. 21 and 28.

²⁴ Koch, I.E., 2005. Dichotomies, Trichotomies or Waves of Duties?. *Human Rights Law Review*, 5(1), pp.81-103, at 83.

²⁵ Int'l Law Ass., 2014. *ILA study Group on due diligence in international law*, First Report, viewed October 2016, www.ila-hq.org/download.cfm/docid/8AC4DFA1-4AB6-4687-A265FF9C0137A699

against Torture in regards to States' due diligence obligations.²⁶ The main research questions that the thesis will address can be synthesised as follows:

- What is intimate partner violence from the point of view of international human rights law? How are human rights a theme in IPV?
- What is the relationship between IPV risk factors and international human rights law?
- What are the normative content, the scope and limitations of States' due diligence obligations to prevent IPV? How can States address risk factors for IPV and better respond to the needs of each individual through due diligence?
- What is the difference between State interventions and interferences in the context of IPV?
- What recommendations can be made to enhance the role of due diligence as a tool for preventing IPV? How can due diligence be used to prevent a cycle of abuse from beginning, escalating or resulting in grave violations of human rights?

2.2 Methodology

The thesis utilises various methods to explore the normative content of due diligence obligations as a mandatory standard for reducing the risks associated with IPV, and for preventing human rights violations linked to the occurrence. These methods are represented by a theoretical approach that argues that the social-ecology model of assessing IPV represents the most convincing account of IPV's complexities; and a doctrinal analysis that argues that the development of due diligence norms in human rights law should be underpinned by theoretical studies of IPV as a concept.

The theoretical part accompanies the concept of IPV throughout the thesis, and is largely focused on Heise's social ecology approach to violence against women and its subsequent interpretations and applications to other types of violence against people with vulnerabilities.²⁷ The ecological approach determines levels of risk factors associated with

²⁶ United Nations Human Rights Committee, 1982. *General Comment No. 6: The Right to Life*. para. 5; *Draft General Comment 36*, CCPR/C/GC/R.36/Rev.2.; United Nations Committee Against Torture CAT, 2008. *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2.

²⁷ Heise, L.L., 1998. Violence against women: an integrated, ecological framework. *Violence against women*, 4(3), pp.262-290; Jewkes, R., Levin, J. and Penn-Kekana, L., 2002. Risk factors for domestic violence: findings from a South African cross-sectional study. *Social science & medicine*, 55(9), pp.1603-1617; Michau,

intimate partner violence and allows the connection of these risk factors to a specific category of human rights. However, the theoretical part also encompasses a review of the most dominant theoretical accounts of IPV to day, as evaluated by Dixon and Kevan, Woodin and O’Leary and Bell and Naugle.²⁸ In the initial stages of the thesis, various themes of IPV are discussed, such as motivation, new and old forms of IPV or risk factors to establish a clear picture of what IPV is. It is impossible to approach any problem preventatively, without first understanding its complexities and the circumstances in which it originates. For that reason, a considerable part of this research has been dedicated to understanding the peculiarities, variables and realities of IPV, across different States and cultures. The theoretical framework has been examined extensively in order to initially apprehend the *causes* of IPV. However, theoretical accounts of IPV are sceptical of ever establishing a list of fixed and exhaustive causes of IPV. This does not, however, invalidate the importance of creating a framework of analysis for the most common or predominant risk factors and contexts in which IPV occurs. While recognising the lack of an established definition of causation, Chapter II presents the most common elements and situations associated with IPV and contrasts this information with the due diligence standard of prevention, in chapters V and VI.

Additionally, after discerning a level of bias across different disciplines exploring IPV and the existence of multiple theories and explanations regarding its nature, the social-ecology model was chosen to guide the analysis throughout the thesis. This choice has been justified earlier: this model seemed to be the most adaptable in terms of including multiple factors that may influence the origins and recurrence of IPV. Recently, the social-ecology model has also been increasingly used by academics as well as international organizations that develop human rights compliance mechanisms and guidelines.²⁹

L., Horn, J., Bank, A., Dutt, M. and Zimmerman, C., 2015. Prevention of violence against women and girls: lessons from practice. *The Lancet*, 385(9978), pp.1672-1684; Terry, M.S., 2014. Applying the Social Ecological Model to Violence against Women with Disabilities. *Journal of Women’s Health Care*, pp.2167-0420.

²⁸ Bell, K.M. and Naugle, A.E., 2008. Intimate partner violence theoretical considerations: Moving towards a contextual framework. *Clinical psychology review*, 28(7), pp.1096-1107; Dixon, L. and Graham-Kevan, N., 2011. Understanding the nature and etiology of intimate partner violence and implications for practice and policy. *Clinical Psychology Review*, 31(7), pp.1145-1155; Woodin, E.M. & O’Leary, K.D., 2009. Theoretical approaches to the etiology of partner violence. In *Theoretical approaches to the etiology of partner violence*. American Psychological Association, pp. 41–65.

²⁹ Krug, E.G., Mercy, J.A., Dahlberg, L.L. and Zwi, A.B., 2002. The World Report on violence and health. *The Lancet*, 360(9339), pp.1083-1088; World Health Organization, 2010. *Preventing intimate partner and sexual violence against women: Taking action and generating evidence*.

Nevertheless, the use of this model for discussing IPV risk factors implies certain limitations. Risk factors may have an extensive variation at an individual and relational level. At the societal level, risk factors remain stable, although not extensively explored throughout the literature. Moreover, risk factors differ across “economies, ecologies, histories, politics and cultures”.³⁰ All these elements vary across States and are expected to influence the possibility of dictating a universal due diligence model for IPV prevention. However, with a slight effort and documented understanding of the peculiarities of IPV in a specific population, the due diligence model has the potential of being successfully adapted for the social context and legal apparatus of States and be successfully used as a preventive tool.

In Chapter III and subsequent chapters, a positivist approach is used to identify international norms relevant to IPV. In that sense, the author relies on the international human rights framework, used as *lex lata*, as an indicator of the normative construct of the international standards prescribed to prevent IPV. Within that framework, the analysis focuses on international norms codified by international organizations, observing both hard law and soft law at different regional levels. If and when a legal interpretation is formulated, the author employs positivism to critically assess the law using the guiding principles provided by Articles 31 and 32 of the Vienna Convention on the Law of Treaties (abbr. VCLT).

As primary sources of obligations, treaties are extensively examined: the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child. To guide the interpretation of relevant articles, the work of human rights bodies is used, mainly their General Recommendations and Comments and on occasion, Concluding Observations. Elements of soft law and guiding documents are presented, as well as the work of regional bodies (Inter-American Court of Human Rights and European Court of Human Rights) in regards to the development of due diligence obligations.

In Chapter IV, using the same positivist approach, the analysis is focused on the intersectional aspect of IPV, respectively the due diligence obligations of States to prevent

³⁰ *id.*

children's exposure to parental IPV and to prevent teen dating violence (TDV). This chapter introduces an original connection between IPV and the human rights of the child. Moreover, the chapter interprets relevant norms from the CRC, underlining that due diligence obligations refer not only to adults but require early interventions, from childhood, to address parental IPV and TDV.

In Chapter V, the doctrinal analysis part of the thesis encompasses variations of the due diligence concept across regional regimes and the interpretation, scope and legal standing of notable cases in different regional systems such as, *A.T v. Hungary* at an international level (CEDAW) or *Kontrovà v. Slovakia* at a regional level (ECHR). This part of the project is focused on the human rights framework, utilizing it for the analysis and comparison between the dichotomy of positive-negative obligations and the due diligence standard, the evolution of due diligence and its practical repercussions at the time of implementation in domestic legal systems. The cases chosen for examination reveal the content of due diligence obligations at an international level (CEDAW), especially with regard to conceptualising IPV as gender discrimination and observing the connection between IPV and risk factors such as gender stereotypes and inequality. The ECtHR cases highlight the content of due diligence obligations at a regional level and the connection between IPV and violations of the right to life and prohibition of torture. The analysis will also underline the possibility that, in the future, victims of IPV seek redress *via* the Committee against Torture rather than the CEDAW Committee at an international level. Substantively, this also carries a shift in the narrative: conceptualising IPV as a matter of torture or ill-treatment or a violation of the right to life rather than a problem of gender inequality and thus demanding adequate State conduct.

Relying on early findings, Chapter VI and VII are concerned with the content of the 5 Ps (*Prevent, Protect, Prosecute, Punish, Provision of redress*) and discuss the implications for State conduct regarding (a) economic, social and cultural rights and (b) civil and political rights. Best State practice guiding documents will be analysed, such as the Handbook for Legislation on Violence against Women, the Handbook on Effective police responses to violence against women, Handbook for National Action Plans on Violence against Women and the Due Diligence Project Report to illustrate the normative content of the 5 Ps.

In assessing the implications for each category of human rights, Chapter VI will discuss State considerations for designing interventions: should interventions be aimed at sustaining a

relationship or creating dissociative effects between partners? To what extent can and should the victim's needs and wishes be considered and incorporated into State interventions? Are there alternative interventions aimed at empowering a relationship towards positive dynamics?

Finally, the thesis argues for a greater focus on participation and empowerment for IPV: in cases where the State has no knowledge of the abuse and no possibility of direct intervention, it is paramount to empower individuals to recognise, disclose and trigger the intervention of the State and prevent further abuse. Individuals and communities must be made aware of the costs and long-term consequences of IPV, to encourage a communal approach to the phenomenon, and combat its acceptability as a private issue. The thesis concludes with a series of important recommendations, relevant for all stakeholders, especially States, a thesis summary and concluding remarks related to the future of IPV prevention around the world.

3. Assumptions, key concepts and limitations

3.1 Assumptions

The thesis employs the following preliminary assumptions:

- Intimate partner violence constitutes a human rights issue, a violation of certain individual rights, both civil and political and economic, social and cultural rights. These assumptions are explored in Chapters II and III.
- In order to guarantee appropriate protection against IPV as a human rights violation, a human rights approach must be employed in mapping the concept and designing preventive laws and policies. The benefits and implications of a human rights approach are discussed in Chapters II and III.
- Intimate partner violence constitutes a violation of the rights of the child. This assumption is explored in Chapter IV.
- When employing a human rights approach to defining and conceptualising IPV, due to the individual nature of rights, the concept will often be degenderized. Due to the unequal gender prevalence of intimate partner violence and the majoritarian victimization of women, a balance is struck between acknowledging gender and

patriarchal attitudes as risk-factors for victimisation and providing human rights solutions targeted at ensuring that all individuals enjoy the same level of State protection against the occurrence. De-genderizing IPV is an implication of the universal and individual character of human rights. However, IPV is frequently associated with VAW in the international human rights sphere.³¹ The relationship between IPV and VAW will be further discussed in Chapters II, V and VI.

- IPV does not have a singular cause but rather occurs with individuals displaying one or multiple risk factors for victimization and perpetration. This assumption is explored further in Chapter II.
- IPV represents a variable concept that can be explained by a multitude of theories, employing a multitude of approaches. Throughout the thesis, a human rights approach is used to reconcile different understanding of intimate partner violence. In doing so, the thesis will draw on the social-ecology model, an inclusive model in regards to the multiple explanations and dimensions of IPV. Risk factors for IPV and the variable causes affecting IPV are discussed in Chapter II and throughout the thesis.
- IPV can be prevented. This depends on a number of factors and the adoption of a number of measures. By fulfilling individual human rights associated with IPV, such as the right to life, prohibition of ill-treatment, the right to equality and non-discrimination, States can lower the risk factors associated with IPV. This assumption is examined in Chapters IV and V that focus on portraying how States can improve their conducts to prevent the initial abuse or its further escalation.
- The obligation of States to intervene in IPV is not absolute. A legal State intervention can become an interference if the State does not follow the limitations prescribed in human rights law, especially those related to the right to private and family life. The difference between a State intervention and interference is explored in Chapter VI.

³¹ United Nations General Assembly, 2006. *In-depth study on all forms of violence against women, Report of the Secretary-General*, A/61/122/Add.1, at 37: Intimate partner violence is considered a form of violence against women in the family: “Commonly identified forms of violence against women in the family include: battering and other forms of intimate partner violence including marital rape; sexual violence; dowry-related violence; female infanticide; sexual abuse of female children in the household; female genital mutilation/cutting and other traditional practices harmful to women; early marriage; forced marriage; non-spousal violence; violence perpetrated against domestic workers; and other forms of exploitation”.

3.2 Key concepts and guiding definitions

Intimate partner violence (IPV): Any “behaviour by an intimate partner that causes physical, sexual or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviours. This definition covers violence by both current and former spouses and other intimate partners”.³² This is a guiding definition, predominantly but not exclusively used in the thesis. It encompasses both IPV episodes and IPV as a pattern of repetitive abuse; although a distinction is made when relevant.

Domestic violence (DV): “acts of violence that occur between people who have, or have had, an intimate relationship; who are in a family relationship; or who are in a domestic setting”.³³ In the thesis, the terms IPV and DV are rarely used inter-changeably, unless the scholarship has used the terms as synonyms and the data related to domestic violence is in fact, congruent to the above mentioned definition of IPV. In the thesis, domestic violence is understood to encompass other abusive manifestations, such as elderly abuse or child abuse.³⁴

Violence against women (VAW): “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.³⁵

Teen dating violence (TDV): Any act of intimate partner violence occurring in adolescence, including “physical, verbal, emotional, digital, sexual, or economical” abuse, manifesting “in a single act, happening only once, or it can be a long-term pattern of abusive behaviour and violence”.³⁶

³² World Health Organization, 2013. *Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines*. World Health Organization.

³³ Our Watch, 2014. *Policy Brief 1, Key Terms, Definitions and Statistics*, viewed April 2018, [https://www.ourwatch.org.au/getmedia/a8797434-3d55-4687-8a00-54c383d0f193/Accessible-Policy Brief 1 Key Definitions and Statistics.pdf.aspx?ext=.pdf](https://www.ourwatch.org.au/getmedia/a8797434-3d55-4687-8a00-54c383d0f193/Accessible-Policy%20Brief%201%20Key%20Definitions%20and%20Statistics.pdf.aspx?ext=.pdf)

³⁴ *Convention on preventing and combating violence against women and domestic violence*, 2014. *Children's Rights*, Council of Europe, viewed April 2018, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804734f2>; Council of Europe refers to “domestic violence against children” when referring to child abuse; and incorporates the umbrella term “domestic violence” to refer to broad patterns of violence, such as honour violence.

³⁵ *Declaration on the elimination of violence against women*, 1993. United Nations General Assembly A/RES/48/104.

³⁶ Reform, 2016. *Dating Violence among Nordic Youth Report and Recommendations from the 2016 Nordic*

Risk-factor(s): “attributes, characteristics or exposures of an individual that increase the likelihood” of experiencing IPV.³⁷ In the context of IPV, any circumstance or attribute that increases liability in a way conducive to either perpetrating or being victimised is considered a risk factor.

State intervention: Any legislative or regulatory measure of economic, social, cultural, civil or political nature, adopted by the State with the purpose of complying with its international human rights obligations.

Due diligence obligations (in the context of IPV): international human rights obligations of conduct, sourced from multiple human rights treaties, requiring that State authorities actively intervene and address the individual, relational and societal risk-factors associated with IPV perpetration and victimization.³⁸

3.3 Limitations of the research

The present research operates under certain limitations, innate to the variable nature of IPV and the character of international human rights law that lacks direct and often effective enforcement mechanisms. The thesis does not aim to resolve any tensions in the scholarship related to the causes of IPV or the role of gender in the occurrence. Whenever risk factors or IPV elements are discussed, the thesis aims to critically assert how these elements connect to human rights obligations and principles. By bridging a social ecology and a human rights approach to IPV, the thesis tries to reconcile as many understandings as possible regarding the nature of IPV in order to recommend what State conduct would be most efficient in preventing IPV for all individuals. This demands working with multiple definitions of IPV and trying to reconcile comparative legislative, policy and academic explanations for partner abuse. As noted by a recent study of the European Institute for Gender Equality, definitions of intimate partner violence vary between international organizations such as the UNICEF, UNODC, World Bank, WHO and various

Expert Conference on Violence in Adolescents' Intimate Relationships, viewed February 2018, <https://reform.no/wp-content/uploads/2017/04/2016.11.28-Recommendationsfrom-Dating-Violence-Nordic-Youth-expert-conference.pdf>

³⁷ World Health Organisation, n.d. *Risk-factors. Health Issues*, viewed April 2018, http://www.who.int/topics/risk_factors/en/

³⁸ A complete definition and analysis of due diligence is provided in Chapters V and VI. See Supra note 15 and note 17.

legislative instruments.³⁹ Within the European Union, the same study confirms that member States have different approaches to sanctioning IPV within their domestic systems and that in some States no legal or statistical definition can be found.

At the same time, the international human rights system operates under an “all appropriate measures” principle when generating norms and implementation mandates for preventing IPV.⁴⁰ This means that, on many levels, State obligations to prevent IPV-related human rights violations, are conditional: States are required to take all appropriate measures to prevent gender-based violence but they are not expected to prevent IPV in every and all possible scenarios. However, if IPV reaches certain thresholds and amounts to inhuman and degrading treatment or violates an individual’s right to life, the nature of the obligation shifts and States are required to go beyond all appropriate measures by adopting a swift and immediate protective conduct. The difference in the content of State obligations to prevent IPV based on associated human rights violations will be discussed at large in Chapter III. Some international mandates, comprising both positive and negative obligations, related to IPV are clear: such as the obligation of States to adopt legislative measures that sanction IPV or guarantee that individuals have access to justice. Due diligence however, implies a level of legal finesse and demands that States adopt a wide range of measures to tackle the subtle elements that influence IPV. Like all measures, these must guarantee prevention against IPV for all individuals, despite the fact that IPV is a variable occurrence and it is difficult to assess the needs of every individual especially when a situation of abuse has not yet taken place.

This thesis aims to clarify what due diligence implies for the prevention of IPV and recommends that States incorporate individuals’ needs into preventative measures but is limited in generating responses that would fit all possible IPV scenarios in all States around the world. In other words, this research provides States with a better and more structured understanding of their international obligations to prevent IPV. At the same time, the thesis acknowledges the difficulty

³⁹ European Institute for Gender Equality, 2017. *Glossary of definitions of rape, femicide and intimate partner violence*, viewed July 2017, <http://eige.europa.eu/rdc/eige-publications/glossary-definitions-rape-femicide-and-intimate-partner-violence>

⁴⁰ See CEDAW Art. 2,3,5,6 and CEDAW Committee, 2017, *General Recommendation 35* (CEDA W/C/GC/35), para 34-35: “adopt and implement effective legislative and other appropriate preventive measures to address the underlying causes of gender-based violence against women, including patriarchal attitudes and stereotypes, inequality in the family and the neglect or denial of women’s civil, political, economic, social and cultural rights, as well as to promote women’s empowerment, agency and voice”.

of designing State measures that will eradicate IPV instantly, due to the complex nature and the multitude of combinations of risk factors associated with IPV. The thesis is in its majority, exploratory, and aims to present how due diligence obligations should be adapted to a multitude of cultures, of IPV behaviours as well as the variety of issues that arise when trying to prevent IPV, the multitude of choices State authorities must make and the multitude of actors involved. In that sense, the thesis is rarely definitive, making claims that a certain measure or intervention will have guaranteed success for preventing IPV. Instead, the thesis identifies the measures that can be adopted, the surrounding issues of those measures and suggests how combining measures and fulfilling multiple human rights, represents a promising strategy for lowering IPV prevalence.

4. Aims of the research and contribution to the field

The aim of the present thesis is to promote a human rights approach to IPV, both in conceptualization and prevention, and to determine the operational implications of due diligence for multiple stakeholders engaged with IPV. States bear the responsibility to prevent IPV by fulfilling human rights but are not always presented with concrete steps for implementing a human rights approach or complying with their human rights obligations. This study aims at developing stakeholders' understandings and compliance potential regarding the duties and conducts required to prevent human rights violations originating from IPV. Equally important, the study intends to clarify how certain human rights violations can foster a social climate where IPV can originate. By applying a human rights approach throughout this thesis, the goal is to inform stakeholders of the benefits that arise from operating under the due diligence standard of conduct. In Chapter II, many accounts and models that reflect different approaches to understanding and preventing IPV, are presented. These are also mirrored in the multiple ways academics, practitioners and governments themselves approach IPV. The added value of a human rights approach is represented by the possibility of conceptualising IPV holistically and utilising the indivisibility and universality of human rights to move beyond narratives of gender, which have been predominantly used. At the same time, a human rights approach is also concerned with post-IPV narratives, bringing forward the need for the State to provide redress and reparations for violations of human rights originating from IPV. A human rights approach also allows for a careful consideration of the relevant right holders in situations of IPV and, as it will be discussed in Chapter IV, signals that this form of violence can be a threat to children, creating a cascade of negative effects and human rights

violations. Some of the models used to study IPV relate to human behaviour and have been conducive to establishing individual risk factors, such as the study of anxiety, mental health or insecure attachment and how these create a predisposition towards IPV. Other studies have focused on the social aspects of IPV to point out that societal norms, traditional attitudes and stereotypes also influence IPV. In that sense, both the social-ecology approach and the human rights approach integrate various understandings of IPV to deliver a model of State behaviour for preventing IPV. All these aspects are discussed throughout the thesis and ultimately, analysed through a legal filter aimed at recommending the development of national and international policies to prevent IPV. The main contributions of the thesis will be to the field of international human rights law. Moreover, the thesis is expected to contribute for stakeholders of IPV, at legislative, policy and implementation levels. Adjacent social disciplines can benefit from the considerations discussed throughout the thesis, such as the dissociation of IPV from other forms of domestic violence, the conceptualization of IPV as torture, inhuman or degrading treatment and the due diligence framework for eradicating systemic forms of violence. Among others, the expected thesis contributions are:

- Illustrate how States' obligations to prevent IPV are framed across international human rights treaties.
- Fill in the international human rights literature gaps related to the conceptualization of IPV: generally, (a) as a human rights violation, and particularly (b) as a violation of the right to life, a violation of the prohibition of torture and ill-treatment and a violation of the rights of the child.
- Provide a developed analysis of how various forms of IPV fail to be addressed by States. This is achieved by analysing forms of IPV which are not prominent in the existing literature, such as reproductive coercion and teen dating violence, and by portraying the link between human rights and all forms of IPV.
- Critically develop the content, limitations and scope of due diligence obligations to prevent IPV. This includes, but is not limited to, introducing the concepts of anticipative prevention and escalation mitigation, presenting the limitations of State diligent interventions and promoting a transformative aim in all State interventions.
- Portray the due diligence framework as a risk-centric approach to combating IPV and promote a risk-based conceptualization of IPV.

- Enhance the understandings of the benefits of applying a human rights approach to combat IPV and promote the use of this approach for other forms of systemic violence.
- Augment the existing human rights literature regarding the content of the obligation to provide compensation and redress for victims of intimate partner violence.
- Signal the need for developing due diligence intersectionality in IPV, for individuals suffering from multiple vulnerabilities.

The thesis contains a number of innovative aspects, such as the link between TDV and human rights, conceptualizing reproductive coercion as a human rights issue, exploring how the right to housing is relevant in IPV and portraying the difference between a legitimate State intervention in a case of IPV and what would constitute an interference.

5. Thesis structure

Chapter I: Introduction to the thesis and brief presentation of the research questions, methodology, limitations and a concise presentation of the contribution that the thesis makes to the legal field and in particular, to the field of international human rights law.

Chapter II: Introducing IPV as a human rights issue. This chapter identifies the state of knowledge by reviewing the main theoretical accounts for IPV and explores the risk factors associated with the phenomenon. It aims to frame IPV and present the circumstances and characteristics of the actions States are required to respond to, in order to prevent IPV.

Chapter III: Investigates the international obligations of States in relation to intimate partner violence. Examines the International Bill of Rights and establishes a connection between different abusive manifestations that constitute IPV and human rights violations. Analyzes IPV as an issue of gender stereotypes and gender discrimination (CEDAW); IPV as a violation of the right to life and prohibition of torture (ICCPR, CAT); IPV as a violation of the right to sexual health; and intersectional aspects of IPV (CRPD).

Chapter IV: Investigates the international obligations of States in relation to preventing the exposure of children to parental IPV and due diligence obligations to prevent teen dating violence (TDV).

Chapter V: Studies the due diligence doctrine at an international and regional level and its implications for State obligations. Observes various human rights bodies decisions and analyses positive/negative obligations to prevent IPV in contrast to the due diligence standard. The chapter also considers how the obligation of due diligence is underpinned by or reflects risk-assessment and mitigation strategies and how it can be used to lower IPV risk factors by fulfilling human rights.⁴¹

Chapter VI: Analyses the 5 Ps framework in regards to (a) economic, social and cultural rights and (b) civil and political rights. This chapter also discusses the aims and limitations of due diligence and the difference between State interventions and interferences with human rights.

Chapter VII: Dedicated to a concluding discussion regarding the implications of the information obtained in earlier steps. The chapter fulfils the objectives of the study, critically contributing to the development of the due diligence doctrine for IPV and discusses tangible measures that States, as well as other stakeholders, can adopt and implement to prevent IPV. The thesis concludes with a brief summary and remarks related to the work gathered here.

⁴¹ De Schutter, O., Ramasastry, A., Taylor, M.B. and Thompson, R.C., 2012. Human Rights Due Diligence: The Role of States. *Human Rights in Business*, at 55-61. *Human Rights Due diligence procedures include: (1) The Responsibility to Identify Actual or Potential Impacts, (2) The Responsibility to Prevent and Mitigate, (3) The Responsibility to Account.*

Chapter II: Introducing intimate partner violence

1. Introduction
2. Intimate partner violence: core concepts
3. Motivation and causation: main theoretical accounts
4. Risk-factors associated with intimate partner violence
5. The relationship between human rights and risk-factors for IPV

1. Introduction

Intimate partner violence (IPV) represents a universal public health issue, an epidemiology that has been the object of growing inter-disciplinary research in the past decade. Globally, 30.0% of ever-partnered women have experienced intimate partner violence.¹ Intimate partner abuse can take subtle or evident forms, and is often characterized by an escalation of violence that results in violations of the right to life with “more than a third of female homicides [being] perpetrated by an intimate partner”.² Intimate partner violence “occurs in all settings and among all socioeconomic, religious and cultural groups and the overwhelming global burden of IPV is borne by women”.³ Around the world, IPV is increasingly criminalised, although there are countries where it remains legal for a man to “reasonably chastise” his wife.⁴ In States where IPV is sanctioned, the effectiveness of the laws will depend on State institutions and how they respond to private acts, as IPV remains in the eyes of many, a private and personal issue.⁵ There have been numerous calls for action, in the past couple of years, for States to actively intervene to reduce the prevalence of all forms of violence against women and implicitly, IPV. These concerns have, in some places, also lead to the celebration and adoption of new treaties, conferences, platforms and the development of new ways in which States are expected to fulfil their human rights obligations and provide protection against IPV.

¹ World Health Organization, 2013. *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*. World Health Organization.

² Stöckl, H., Devries, K., Rotstein, A., Abrahams, N., Campbell, J., Watts, C. and Moreno, C.G., 2013. The global prevalence of intimate partner homicide: a systematic review. *The Lancet*, 382(9895), pp.859-865.

³ World Health Organization, 2012. *Understanding and addressing violence against women: Intimate partner violence*, viewed March 2018, http://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf;jsessionid=1F4F696832F8C4563A939142EB8681FD?sequence=1

⁴ Benninger-Budel, C., Lacroix, A.L. and Sottas, E., 1999. *Violence against women: A Report*, at 74. World Organisation Against Torture (OMCT).

⁵ id.

Violence between romantic partners is atypical, as each perpetrator and abusive episode comes with its own set of features, circumstances and willingness to engage State authorities to escape abuse. Generalizations regarding the motivations and causes for IPV can mislead or limit the potential of preventative approaches. Recognizing individuality in IPV is an essential step towards prevention.

The literature explores numerous etiological approaches concerned with the causes and motivations for intimate partner violence. These explanations are either socio-cultural accounts for violence against women, inter-personal accounts of family violence, or intrapersonal interpretations of risk factors associated with violent behaviours.⁶ Despite these efforts, the scholarship struggles to deliver a definitive answer regarding the causes of IPV, which in turn, influences laws and policies aimed at combating IPV. This limitation is attributed, *inter alia*, to the fact that motivation remains one of the most disputed elements of IPV, along with the quality and reliability of its measurement:

Motivations are internal experiences that may be difficult for even the perpetrator to discern. Even when a perpetrator is able to accurately introspect about and subsequently identify their relevant motives, social desirability concerns may preclude admission of these motives.⁷

For that reason, the thesis approaches IPV through the lens of risk factors which are understood as “attributes, characteristics or exposures of an individual that increase the likelihood” of experiencing IPV. Risk factors are viewed not as immutable or unjustified attributes of individuals or societies but obstacles and constraints for the enjoyment of international human right.⁸ Throughout the thesis, IPV is conceptualised as a human rights violation and preventative approaches are formulated as due diligence obligations of States to address societal, individual and relational risk factors that create a climate of violence that reinforces IPV. This chapter focuses on reviewing the main theoretical accounts related to the nature of IPV and to identify the risk-factors associated with it. The chapter aims to provide a brief analysis of what violence is, in the context of intimate relations, and what we currently

⁶ Woodin, E.M. & O'Leary, K.D., 2009. Theoretical approaches to the etiology of partner violence. In *Theoretical approaches to the etiology of partner violence*. American Psychological Association, pp. 41–65.

⁷ Langhinrichsen-Rohling, J., McCullars, A. and Misra, T., 2012. # 10 Motivations for Men and Women's Intimate Partner Violence Perpetration: A Comprehensive Review. *Partner Abuse*, 3(4), pp.1-33.

⁸ World Health Organization, n.d. *Risk factors*, viewed June 2018, http://www.who.int/topics/risk_factors/en/

know about the individuals and circumstances in which IPV originates and escalates. The chapter will help identify gaps and shortcomings related to what we currently know about IPV, especially concerning the personal background of victims, perpetrators and their families. Who are the victims and perpetrators of IPV and what manifestations and behaviours are attributed to each typology of abuse? What are the political, personal and social contexts in which IPV is most likely to occur? These questions play a major role in conceptualising IPV as a human rights violation and demonstrate that risk factors for IPV victimization and perpetration arise from unfulfilled human rights.

2. Intimate partner violence: core concepts

There is not one single definition for intimate partner violence. The difficulty of defining IPV is related to the nature of violence in the context of romantic relationships, that takes many forms. Some of these forms are subjected to cultural and social variations. Definitions of IPV differ according to specific fields of study, meaning that psychology, sociology, legal sciences or policy documents may have particular understandings of IPV. A comparative glossary drafted by the European Institute of Gender Equality (EIGE) underlines the different definitions some organizations use.⁹ Based on the comparison, EIGE proposed that IPV is defined as “any act of physical, sexual, psychological or economic violence that occurs between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.¹⁰

Definitions of IPV generally contain a few mutual elements. The most relevant and common definitional terms for the conceptualisation and understanding of IPV are (a) the existence of a romantic relationship, (b) the nature, origins and characteristics of violence within a romantic setting and (c) the legal frameworks that deal with its prevention and sanction. The American Centre for Disease Control and Prevention (CDC) defines an intimate partner as “a person with whom one has a close personal relationship that may be characterized by the

⁹ European Institute for Gender Equality, 2017. *Glossary of definitions of rape, femicide and intimate partner violence*, viewed October 2017, <http://eige.europa.eu/rdc/eige-publications/glossary-definitions-rape-femicide-and-intimate-partner-violence>. “The European Institute for Gender Equality (EIGE) is an autonomous institution of the European Union, that contributes to and strengthens the promotion of gender equality and fights against discrimination based on sex. Its goal is to raise EU citizens’ awareness of gender equality. From EIGE’s work we can observe that some States might not have legislative definitions of IPV but instead sanction IPV under domestic violence or other criminal, civil or even administrative laws”.

¹⁰ *id.*

partners' emotional connectedness, regular contact, ongoing physical contact and sexual behavior, identity as a couple, and familiarity and knowledge about each other's lives [although] the relationship need not involve all of these dimensions".¹¹

Regarding the nature of a romantic relationship, it might be important to consider when an intimate relationship begins between two individuals and how strong or consistent it needs to be. Are two partners intimate only if their relationship has a sexual component? Moreover, with the growth of new technologies and their impact on human dynamics, can we define a relationship as intimate if the interaction between partners is preponderantly virtual? If domestic law does not recognise a same-sex civil union, is the violence between intimate partners deemed to be domestic and will the legal response be equivalent to that of heterosexual relationships?

Defining an intimate relationship is usually a matter of national civil law but this can vary across cultures and countries. Adolescent romantic relationships have been defined as "mutually acknowledged ongoing voluntary interactions, commonly marked by expressions of affection and perhaps current or anticipated sexual behaviour".¹² By analogy, this definition can be applied to adult relationships as well, regardless of sexual orientation or gender identities. For example, in Australia, a *de facto* romantic relationship must meet certain requirements of the *Family Law Act 1975* (Cth), section 4AA.¹³ The same law determines the relevant circumstances used to assess the existence of a relationship, such as "the duration of the relationship, the nature and extent of their common residence; whether a sexual relationship exists; the degree of financial dependence or interdependence, and any arrangements for financial support, between them; the ownership, use and acquisition of their property...etc.". ¹⁴ Within the European Union, the regulation of informal relationships varies across jurisdictions, and so far only nine States have chosen to define *de facto* relationships:

¹¹ Breiding, M., Basile, K.C., Smith, S.G., Black, M.C. and Mahendra, R.R., 2015. Intimate partner violence surveillance: uniform definitions and recommended data elements. Version 2.0.

¹² Collins, W.A., Welsh, D.P. and Furman, W., 2009. Adolescent romantic relationships. *Annual review of psychology*, 60, pp.631-652.

¹³ "Meaning of *de facto* relationship: (1) A person is in a *de facto* relationship with another person if: (a) the persons are not legally married to each other; and (b) the persons are not related by family (see subsection (6)); and (c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis".

¹⁴ *Australian Family Law Act 1975*. Section 4AA (2).

Sweden, Hungary, Slovenia, Croatia, Catalonia, Portugal, Scotland, the Republic of Ireland and Finland have explicitly chosen to reform their family law to regulate informal relationships through legislation. In doing so, these jurisdictions have created a *lex specialis* for informal relationships, in the sense of an established legal framework, defining and delineating the recognised informal relationship and attaching legal consequences to the relationship in their legislation regarding family law.¹⁵

Given the increased use of new technologies for establishing or maintaining relationships, “the rapid expansion and availability of new information technologies poses new threats to both victims and domestic violence service providers”.¹⁶ New technologies can not only facilitate communication between partners but also provide challenges in regards to privacy and information sharing between them. For example, unauthorized surveillance is legally defined as the “unreasonable monitoring or tracking of the person’s movements, activities or interpersonal associations without the person’s consent, including, for example, by using technology” and includes “reading a person’s SMS messages and monitoring a person’s email account or internet browser history”.¹⁷ Such behaviors, also known as *snooping*, could be motivated by curiosity, suspicions of infidelity or reciprocity.¹⁸ At the same time, there is a valid assumption that in romantic unions “high levels of personal disclosure are expected”.¹⁹ It is thus worth noting that reciprocity is one of the motivations for snooping and assuming that in *some* romantic relationships this is customary, it might not be perceived by partners as an abusive manifestation of power or control. Additional to the issues of privacy, new technologies and social media platforms can become openings for abusers to track, stalk, monitor and engage with victims. Online violence against women is emerging as a specific discipline of international law study with increasing pressures on States and internet providers to apply due diligence and prevent cyber abuse.²⁰ However, so far “initiatives by States and internet intermediaries to confront online violence have proven sufficiently

¹⁵ Mol, C., 2016. Reasons for Regulating Informal Relationships: A comparison of nine European jurisdictions. *Utrecht L. Rev.*, 12, at 98.

¹⁶ Southworth, C., Finn, J., Dawson, S., Fraser, C. and Tucker, S., 2007. Intimate partner violence, technology, and stalking. *Violence against women*, 13(8), pp.842-856.

¹⁷ *The Domestic and Family Violence Protection Act of 2012*. (QLD), Section 8(2)(5).

¹⁸ Derby, K., Knox, D. and Easterling, B., 2012. Snooping in romantic relationships. *College Student Journal*, 46(2), pp.333-344.

¹⁹ *id.* at 333-334.

²⁰ Aziz, Z. 2017. *Due Diligence and Accountability for Online Violence against Women*, Due Diligence Project, viewed September 2017, <http://www.duediligenceproject.org/>

ineffective to stem online violence, protect women, bring the perpetrators to account and provide satisfactory redress for victims/survivors”.²¹

Every inter-personal relationship is different and for that reason, violence between partners can be generally considered as atypical and can manifest in multiple and diverse ways. With regard to the nature of violence, the WHO explains, “any comprehensive analysis of violence should begin by defining the various forms of violence in such a way as to facilitate their scientific measurement”.²² In the exploration of IPV, perhaps the most unsought questions have been: *how is this type of violence different from others and what motivates or triggers this response in individuals who are otherwise non-violent?* Although IPV has been the object of specialized theoretical framework analysis a “central limitation identified for several of the existing IPV theoretical theories is the lack of or mixed empirical support for certain theoretical tenets”.²³ The scholarship recognises “there continues to exist a divide between researchers on how to conceptualize and approach IPV research”.²⁴ Despite the existence of multiple theories that examine the specific set of aggressive manifestations and motivations behind IPV, legislative and governmental initiatives to combat and prevent the phenomenon are infrequently informed by context, time variables and the volatility of partner dynamics. Generally, State have shown signs of understanding the importance of sanctioning IPV; but rarely have criminal laws or regulatory frameworks exhibited a synchronicity with research or human rights developments in this field.

It appears that it is limitedly understood why individuals respond violently to certain partners and not others, what inhibits or triggers aggressiveness between partners and what constitutes a violent predisposition between two specific individuals. Longitudinal research is greatly needed “for examining the interaction of individual, situational, and contextual variables among people who are violent generally, violent only with intimates, and nonviolent”.²⁵

²¹ *id.*

²² World Health Organization, 2002. *The world health report 2002: reducing risks, promoting healthy life*. World Health Organization.

²³ Bell, K.M. and Naugle, A.E., 2008. Intimate partner violence theoretical considerations: Moving towards a contextual framework. *Clinical psychology review*, 28(7), pp.1096-1107.

²⁴ *id.* at 1101-1102

²⁵ Wilkinson, D.L. and Hamerschlag, S.J., 2005. Situational determinants in intimate partner violence. *Aggression and Violent Behavior*, 10(3), pp.333-361.

The World Health Organization defines violence as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation”.²⁶ In the eyes of the WHO, IPV is a form of inter-personal violence often occurring in the residence of those involved.²⁷ Violence within an intimate setting can have physical or non-physical manifestations or the two types of manifestations can co-occur and one or both partners can be subjected to multiple and diverse forms of violence.²⁸

Non-physical abuse is reflected through behavioral or verbal actions, leaving no physical traces and “terms such as verbal abuse, emotional abuse, psychological abuse, psychological violence, verbal and symbolic violence, emotional or psychological maltreatment are used interchangeably” when referring to non-physical violence.²⁹ On the other hand, physical manifestations of IPV vary from sexual abuse to “acts of physical aggression – such as slapping, hitting, kicking and beating”.³⁰ The WHO recognizes that not all couples experience the same sequence of violent behaviors and identifies two patterns of IPV conflict.³¹ The first pattern mirrors “a severe and escalating form of violence characterized by multiple forms of abuse, terrorization and threats, and increasingly possessive and controlling behavior on the part of the abuser” whilst the second is comprised of “a more moderate form of relationship violence, where continuing frustration and anger occasionally erupt into physical aggression”.³²

Control, domination and certain psychological aspects of partner dynamics are common elements mentioned throughout the literature in relation to both physical and non-physical violence.³³ Some have tried to differentiate between the manifestations of violence using five elements “the potency of the violence, its pattern, the primary perpetrator of the violence, the

²⁶ *Supra*, note 22, at 4-5

²⁷ *id.* at 5-6

²⁸ *id.* at 15-16

²⁹ McKinnon L, 2008. *Hurting without hitting: non-physical contact forms of abuse*, Australian Domestic and Family Violence Clearinghouse, UNSW.

³⁰ *Supra*, note 22, at 88- 89

³¹ *id.* at 92- 93

³² *id.* at 93

³³ Dutton, D.G., 2006. *The abusive personality: Violence and control in intimate relationships*. Guilford Press.

parenting problems of the adults and the preferences of the child”.³⁴ Although this model does not specifically refer to IPV, it suggests that specific elements should be considered when isolating different manifestations of domestic abuse; and that each specific set of actions and manifestations has its own merit, causes, and consequences. This model also calls for segregation between child abuse and intimate partner abuse. As mentioned above, coercive control is one of many proposed typologies of IPV violence, along with violence resistance, situational couple’s violence or separation-instigated violence.³⁵ While some coercive control derives from misogyny and is mainly employed by men, situational violence appears to be perpetrated equally by both genders, and is not connected to the institution of gender power (patriarchy).³⁶ This argument suggests that additional attention must be paid to each violent episode within a relationship but also challenges the idea that intimate partner abuse is *equivalent* to violence against women. The implication is that gender control and subordination are occasionally irrelevant in abusive manifestations between individuals.

Fear of the partner is not characteristic of women or men in Situational Couple Violence, whether perpetrator, mutual combatant, or victim. Unlike the misogynistic attitudes toward women characteristic of men who use Coercive Controlling Violence, men who are involved in Situational Couple Violence do not differ from nonviolent men on measures of misogyny.³⁷

Violence in an intimate relationship is a variable concept that fluctuates in different cultural settings and “cultural justifications for violence usually follow from traditional notions of the proper roles of men and women; in many settings women are expected to look after their homes and children, and show their husbands obedience and respect”.³⁸ It is also important to note that IPV is an evolving concept and much like the above mentioned example of online IPV, other manifestations might come to surface and be criminalized in the future. Such is the case of reproductive coercion as intimate partner violence.³⁹ In a recent paper, the American

³⁴ Johnston, J.R., Roseby, V. and Kuehnle, K., 2009. *In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce*. Springer Publishing Company.

³⁵ Kelly, J.B. and Johnson, M.P., 2008. Differentiation among types of intimate partner violence: Research update and implications for interventions. *Family court review*, 46(3), pp.476-499.

³⁶ *id.*

³⁷ *id.*

³⁸ *Supra*, note 16, at 94- 95

³⁹ Kalichman, S.C., Williams, E.A., Cherry, C., Belcher, L. and Nachimson, D., 1998. Sexual coercion, domestic violence, and negotiating condom use among low-income African American women. *Journal of Women's Health*, 7(3), pp.371-378.

College of Obstetricians and Gynecologists described reproductive coercion as a power and control seeking tactic in a relationship and described the variety of ways in which it can manifest:

Examples include hiding, withholding, or destroying a partner's oral contraceptives; breaking or poking holes in a condom on purpose or removing a condom during sex in an attempt to promote pregnancy; not withdrawing when that was the agreed upon method of contraception; and removing vaginal rings, contraceptive patches, or intrauterine devices (IUDs).⁴⁰

Due to the fact that reproductive coercion has been under-recognized as a form of IPV, prevalence studies measuring this form of abuse are rare. A small study conducted at a family clinic in the USA in 2016 found that 24% of women have experienced at least one type of reproductive coercion.⁴¹ More research into this particular abusive form of IPV is needed, especially in regards to the potential for legally sanctioning such acts.

Along with cultural variation, defining IPV is also a process strongly mediated by gender. The WHO purports that “women can be violent in relationships with men, often in self-defense”.⁴² On the other hand, one study shows that “few women indicated that self-defense was a motivation for their perpetration of emotional abuse” and that motivations behind both physical and psychological abuse in women are “jealousy, stress, in retaliation for emotional hurt, to get partner's attention, and anger”.⁴³ What we know about the concept of violence that surrounds intimate partners is mostly generated by inquiring and investigating male perpetrators. In fact, more information is needed “about the precipitants of female violence, the types of emotional abuse and violent acts they perpetrate, and the impact on children's adjustment, particularly with emotionally abusive, controlling women who are violent with their nonviolent partners”.⁴⁴

⁴⁰ American College of Obstetricians and Gynecologists, 2013. *Committee on Health Care for Underserved Women, Number 554, Committee Opinion*, viewed October 2017, <https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co554.pdf?dmc=1&ts=20171117T0743048444>

⁴¹ Phillips, S.J., Bennett, A.H., Hacker, M.R. and Gold, M., 2016. Reproductive coercion: an under-recognized challenge for primary care patients. *Family practice*, 33(3), pp.286-289.

⁴² *Supra*, note 3

⁴³ Leisring, P.A., 2013. Physical and emotional abuse in romantic relationships: Motivation for perpetration among college women. *Journal of Interpersonal Violence*, 28(7), pp.1437-1454.

⁴⁴ *Supra*, note 35

Defining domestic or intimate partner violence and measuring it are two different sides of the same coin. Most studies that reflect IPV prevalence begin with an assumption of what constitutes violence in a romantic setting. Sometimes, these definitions do not necessarily match legislative definitions under which these occurrences are sanctioned. Conceptualizing IPV seems to have been a process dominated by an etiological approach based on a premise usually rooted in a theory of causation. In 2009, Woodin and O’Leary reviewed the major theories that affect the etiology of partner violence:

Theories of partner violence span the gamut, from sociocultural explanations for men's violence against women, to inter-personal theories of the development and maintenance of violence within families, and finally to intrapersonal accounts of characteristics that place individuals at increased risk of behaving violently.⁴⁵

In their review, Woodin and O’Leary referred to feminist theories, inter-personal theories and multi-systemic theories to explain why IPV occurs rather than to explore its ontological facets. Soon after, Wangman also wrote on the topic of differentiation between typologies of IPV and found that most research is centered on “how IPV is defined and understood, [...], the extent to which we look at incidents; what we think incidents tell us about the experience of violence” and remarked a growing recognition of the importance of context in the exploration of IPV.⁴⁶

The importance of defining IPV has thus been acknowledged as paramount for understanding its manifestations and different abusive behaviors although research in the area of IPV ontology and community attitudes towards IPV is scarce. Ontology is defined by the Merriam-Webster dictionary as “theory about the nature of being or the kinds of things that have existence” and is used here to refer to the existence of a variety of forms of IPV and to the particular nature of each abusive manifestation. Etiology on the other hand is concerned with the “investigation or attribution of the cause or reason for something” according to the Oxford dictionary. Although, as mentioned before, IPV theories are predominantly etiological there has been no evidence to suggest the existence of fixed causes for intimate

⁴⁵ *Supra*, note 6, at 42. “*Etiology*”: a branch of knowledge concerned with causes. Merriam-Webster, 2018. www.Merriam-Webster.com

⁴⁶ *id.* See Wangmann, J., 2011. Different types of intimate partner violence-an exploration of the literature. “*Ontology*”: a particular theory about the nature of being or the kinds of things that have existence.”

partner abuse, especially cultural sensitive causes. The scholarship has identified and consolidated a fusion of risk factors and situational predispositions but to this day, we cannot answer the question of what *causes intimate partner violence*. As mentioned earlier, this shortcoming could derive from the lack of exploration of the psychopathology behind violence in general, and the reduced interest in an isolated examination of the ontology of relationships and the ontology of violence.

3. Motivation and causation in intimate partner violence

At the heart of IPV often lays the question of what causes or triggers such abusive manifestations between partners and what are the internal or external factors that contribute to the formation of an abusive response within a relationship's dynamic. The answers vary according to the theory used to debunk IPV myths and realities.

It is important that causation, correlation and risk factors are understood as separate responses to the question of why IPV originates both at an individual and societal level. One of the most predominant theories, the feminist one, places patriarchy and gender roles at the centre of partner violence. Many feminist accounts adopt the position that men, supported by their historical and institutional dominance over women have transferred that submissive quest into their romantic relationships and that violence is a tool for maintaining power and leadership both in the public and private spheres.⁴⁷ As discussed in the following chapters, international human rights law also conceptualises IPV as violence against women, and centres the discourse of State obligations to prevent IPV around gender and consequently gender inequality, patriarchy and the societal power structure between sexes.

Violence is regarded as a means by which men ensure the subordination of women, and fear of the threat of violence is a mechanism to maintain women in subordinate roles within society.⁴⁸

⁴⁷ Dobash, R.E. and Dobash, R., 1979. *Violence against wives: A case against the patriarchy*, pp. 179-206, New York: Free Press; Yllö, K.E. and Bograd, M.E., 1988. Feminist perspectives on wife abuse. In *National Conference for Family Violence Researchers, 2nd, 1984, U of New Hampshire, NH, US*. Sage Publications, Inc; Houston, C., 2014. How feminist theory became (criminal) law: Tracing the path to mandatory criminal intervention in domestic violence cases. *Mich. J. Gender & L.*, 21, at 217.

⁴⁸ Stanko, E.A., 1995. Women, crime, and fear. *The Annals of the American Academy of Political and Social Science*, 539(1), pp.46-58.

Nevertheless, Dutton has observed as early as 1984 that “patriarchy must interact with psychological variables in order to account for the great variation in power-violence data”.⁴⁹ The same author has referred to cross-cultural studies to refute the idea of higher and greater violence in patriarchal societies and showed that multiple variables influence IPV.⁵⁰ Dutton also asked an important question: “what kind of causal weight does patriarchy have if 90% of the men raised under it are nonassaultive?”.⁵¹ This question remains open.

Decades later after the formulation of feminist explanations over how patriarchy influences IPV, gender inequality, stereotypes and men’s dominance are still fundamental in exploring IPV and other forms of VAW. These remain stable risk-factors for intimate partner victimization and will be discussed later when I review risk-factors and explain their relationship with human rights. Over the last 30 years, the scholarship has not resolved the problem of whether and how much patriarchy and male dominance are accountable for IPV. It falls outside the scope of this thesis to analyze this debate or provide a definitive answer to these questions. It must, however, be acknowledged that feminism made vital contributions to understanding IPV and gave us fundamental notions such as the cycle of violence, learned helplessness and battered woman syndrome.⁵² Stepping outside the feminist realm, we observe other theories of causation and motivation; and we can affirm that IPV is an occurrence that can be motivated by a number of factors additional to gender. For example, Dutton reflects on attachment theory that “insecurely attached individuals may be controlling or violent to their partners in reaction to perceived rejection or abandonment”.⁵³ Attachment styles are important individual elements to be considered in both heterosexual and homosexual relationships. It has been observed that “insecure attachment/attachment anxiety is noted to be related to experiences of male same-sex intimate partner violence [and] less securely attached men feel that their possession and control of an intimate would be tenuous, and as such are more likely to resort to abuse and violence as a means to 'keep' their partners”.⁵⁴

⁴⁹ Dutton, D.G., 1994. Patriarchy and wife assault: The ecological fallacy. *Violence and victims*, 9(2), at 167.

⁵⁰ *id.* at 170-171

⁵¹ *id.* at 171-172

⁵² For a review of feminist concepts and theories that influence the exploration of intimate partner violence see Ali, P.A. and Naylor, P.B., 2013. Intimate partner violence: A narrative review of the feminist, social and ecological explanations for its causation. *Aggression and Violent Behavior*, 18(6), pp.611-619.

⁵³ *Supra* note 6; Dutton, D. G. 1998. *The abusive personality: Violence and control in intimate relationships*. New York: Guilford Press.

⁵⁴ Jeffries, S. and Ball, M., 2008. Male same-sex intimate partner violence: A descriptive review and call for further research. *eLaw J.*, 15, at 134.

Consequently, the motivations behind IPV can be multiple and might not always be related to gender undercurrents.

The relationship discord model of partner violence, although not well developed theoretically, generally posits that physical violence between partners may occur in part as an outgrowth of a distressed relationship. Partner violence is indeed far more likely for couples experiencing dissatisfaction with their relationships.⁵⁵

Regardless of the theoretical approach for analysing IPV, a review of the literature related to IPV motivations reveals common themes. Self-defence is a major theme in IPV motivation and numerous studies suggest that both men and women perpetrate abuse defensively.⁵⁶ Relationship stress, getting a partner to listen, nagging, gaining attention or compliance, uncontrollable anger or defying the relationship rules are other themes encountered in the literature.⁵⁷ An analysis of IPV motivation-focused studies shows that both gender symmetries and asymmetries are prevalent: “men and women endorsed similar motives for partner violence for most categories [and] despite this gender symmetry, women were more likely than men to be motivated by retaliation and expression of negative emotions”.⁵⁸ Most studies dedicated to examining the causes of IPV are carried upon a heterosexual framework and both the methods and samples are rarely diverse despite the fact that it is now established that factors such as age, gender, race, religious practice and other diversity elements influence IPV perpetration and victimization. Moreover, personal choice is another strong limitation in assessing how societal risk factors in IPV influence causation. For example, patriarchal ideology is mediated by a personal choice of accepting societal impunity of male dominance and control. However, “there is a difference [between] the systemic or ideological frameworks that support, encourage, or make possible particular behaviours and the

⁵⁵ *Supra*, note 4, at 48

⁵⁶ Elmquist, J., Hamel, J., Shorey, R.C., Labrecque, L., Ninnemann, A. and Stuart, G.L., 2014. Motivations for intimate partner violence in men and women arrested for domestic violence and court referred to batterer intervention programs. *Partner abuse*, 5(4), at 359.

⁵⁷ Bair-Merritt, M.H., Shea Crowne, S., Thompson, D.A., Sibinga, E., Trent, M. and Campbell, J., 2010. Why do women use intimate partner violence? A systematic review of women’s motivations. *Trauma, Violence, & Abuse*, 11(4), pp.178-189: “Anger and not being able to get a partner’s attention were pervasive themes. Self-defence and retaliation also were commonly cited motivations, but distinguishing the two was difficult in some studies”.

⁵⁸ *Supra*, note 56

individual choices of individual people”.⁵⁹ In other words, there is a difference between the existence of patriarchal environments and the internalisation of these attitudes, but how and why those choices of internalisation are constituted, is difficult to measure.

Paradoxically, we cannot know how much weight personal choice has in reducing the risks for IPV and how individual factors can counteract a predisposition towards aggressiveness determined by societal factors. The interplay between personality, as a cumulative force of personal agency and environmental influences on one hand, and societal patterns that may or may not influence personality on the other, makes for the biggest challenge in macro-assessing IPV causes. Even when psychology intervenes in assessing how certain individual maladaptive traits influence IPV perpetration, a great variability can be observed:

Narcissism and psychopathy were significant predictors of the use of restrictive engulfment, while psychopathy was the sole predictor for the use of denigration. We did not find Machiavellianism contributed to prediction of psychological or physical/sexual abuse.⁶⁰

Societal factors and personality traits can thus influence different IPV manifestations. It is uncertain if a combination between attachment styles or maladaptive personalities and societal factors will increase the chance of either sexual, economic, physical or emotional abuse. A majority of theories that study IPV or pretend to recognize uniformed typologies have been critiqued on grounds of inclusiveness, measurements, for overlooking non-physical manifestations or for other methodological reasons.⁶¹

As a response, inclusive interdisciplinary theories were generated. Among them, a holistic contemporary approach to IPV is represented by the social-ecology model, that takes into account ontogenic, situational, exosystem and macrosystem factors as purported by Heise’s framework for violence against women. These factors represent levels of an individual’s surroundings, respectively, individual, relational, societal and community levels. Within these interactive layers an individual interacts with other members of the community, and these

⁵⁹ Baker, N.L., Buick, J.D., Kim, S.R., Moniz, S. and Nava, K.L., 2013. Lessons from examining same-sex intimate partner violence. *Sex roles*, 69(3-4), pp.182-192.

⁶⁰ Meere, M. and Egan, V., 2017. Everyday sadism, the dark triad, personality, and disgust sensitivity. *Personality and Individual Differences*, 112, pp.157-161.

⁶¹ *Supra*, note 46

factors aim to include multiple forms of inter-personal relationships. The social-ecology model and its subsequent developments are used to conceptualize a rounded approach to IPV and the transformation of gender dynamics at an individual, relational and societal level.⁶²

Central to an ecological analysis is the principle that phenomenon can only be understood in context and the corollary that context is multilayered and dynamic. These layers of influence start at the overarching assumptions of society and reach down to the individual and her or his personal history, with each level of the analysis being influenced by both relationships at that level and the embedded nature of the entire system.⁶³

Heise's tactic in *Violence against women an integrated, ecological framework* was to organise various explanations for IPV under a comprehensive framework and to differentiate between various levels of environment that might influence an individual's victimization.⁶⁴ Under individual (ontogenic) factors, he classified those personality or developmental features that shape an individual's response to further levels of environment. He observed ontogenic predictors for perpetration in men such as witnessing domestic violence as a child or being abused during childhood but could not observe definitive predictors for women's victimization.⁶⁵ In the microsystem, which Heise describes as a level of personal environment where the individual engages with those closest to him or her, male dominance in the family, male control over wealth and resources, marital conflict and disagreements and use of alcohol were all relevant factors that may or may not affect perpetration. For example, it "remains unclear [...] how alcohol operates to increase the risk of violence".⁶⁶ Under the exosystem, Heise observes broader communal patters influencing IPV: unemployment, low socioeconomic status, isolation of the women from the family and delinquent peer associations. Finally, in the macrosystem, the last level of development representing broad

⁶² Heise, L.L., 1998. Violence against women: an integrated, ecological framework. *Violence against women*, 4(3), pp.262-290; Jewkes, R., Levin, J. and Penn-Kekana, L., 2002. Risk factors for domestic violence: findings from a South African cross-sectional study. *Social science & medicine*, 55(9), pp.1603-1617; Michau, L., Horn, J., Bank, A., Dutt, M. and Zimmerman, C., 2015. Prevention of violence against women and girls: lessons from practice. *The Lancet*, 385(9978), pp.1672-1684; Terry, M.S., 2014. Applying the social ecological model to violence against women with disabilities. *Journal of Womens Health Care*, pp.2167-0420.

⁶³ *Supra*, note 59, at 185

⁶⁴ *Supra*, note 62

⁶⁵ *id.*, Heise, 1998, at 267

⁶⁶ *id.* at 272-273

societal patterns, rigid gender roles, notions of masculinity and male entitlement are detected as other possible explanations of IPV perpetration.

Since Heise, the social-ecology model has been used extensively by academics seeking to integrate various understandings for different forms of violence. The model has been used to analyse violence against women with disabilities,⁶⁷ child maltreatment,⁶⁸ international perspectives on violence against women or IPV in interracial relationships.⁶⁹ The model is also employed by the WHO,⁷⁰ the American CDC⁷¹ and other organizations worldwide in their documented efforts to prevent societal violence.⁷² This thesis favours a social-ecology understanding to IPV because this model is the most adaptable for the inclusion of multiple factors that may influence the origins and recurrence of IPV. The model's central element is risk, and since due diligence obligations of States also revolve around States' interventions to respond and minimise the risk for IPV, the two concepts are highly compatible.

In the following sections, risk factors for IPV will be presented and linked to individual human rights. To that end, the ecological approach is used to determine three levels of risk factors associated with IPV and to connect these risk factors to individual human rights. The social-ecology of IPV is a favoured understanding because it can be used to match different levels of due diligence (individual or systemic) and clarify the content of State obligations for every set of risk factors, which in turn, represent violations of human rights. Thus, risk factors and the social-ecology model are used in this thesis to the extent of facilitating a connection between (a) the factors and contexts surrounding an individual involved in an IPV case and (b) the international human rights system. As I will demonstrate below, risk factors are also

⁶⁷ Terry, M.S., 2014. Applying the social ecological model to violence against women with disabilities. *Journal of Womens Health Care*, pp.2167-0420.

⁶⁸ Little, L. and Kaufman Kantor, G., 2002. Using ecological theory to understand intimate partner violence and child maltreatment. *Journal of community health nursing*, 19(3), pp.133-145.

⁶⁹ Johnson, H., Ollus, N. and Nevala, S., 2007. *Violence against women: An international perspective*. Springer Science & Business Media. See Brownridge, D.A., Taillieu, T., Chan, K.L. and Piotrowski, C., 2018. Understanding the Elevated Prevalence of Intimate Partner Violence in Interracial Relationships. *Journal of interpersonal violence*.

⁷⁰ Krug, E.G., Mercy, J.A., Dahlberg, L.L. and Zwi, A.B., 2002. The World Report on violence and health. *The Lancet*, 360(9339), pp.1083-1088; See Chapter IV; World Health Organization 2010. *Preventing intimate partner and sexual violence against women: Taking action and generating evidence*, viewed December 2016, http://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf.

⁷¹ United States, n.d. CDC, National Center for Injury Prevention and Control, Division of Violence Prevention, viewed October 2017, <https://www.cdc.gov/violenceprevention/overview/social-ecologicalmodel.html>.

⁷² See Washington Coalition of Sexual Assault Programs, n.d. viewed October 2017, <http://www.wcsap.org/social-ecological-model>.

used to exemplify the notion by which IPV is a preventable occurrence: risk factors are contexts and circumstances that arise because of human rights violations.

4. Risk factors associated with intimate partner violence

According to the WHO, a risk factor is “any attribute, characteristic or exposure of an individual that increases the likelihood of developing a disease or injury”.⁷³ On the other hand, the Merriam Webster definition of cause is “a reason for an action or condition”. In the context of IPV, risk factors are thus attributes of surrounding contexts and behaviours that *increase* the likelihood to become either a victim or perpetrator of abuse. A cause, on the other hand, would represent a fundamental state in which such attributes not only increase but also undeniably determine victimization or perpetration of IPV. As mentioned earlier, a large number of variable individual and societal factors are at play in a specific abusive episode and episodes themselves have their own inconsistency. It is highly unlikely to categorically purport *what causes intimate partner violence*. In the context of current research and with the help of risk factors, we might at best be able to assess what causes intimate partner violence in a particular couple or a particular episode. Causation in IPV is often the sum of various risk factors, which are frequently diverse and vary according to the cultural climate in question.

Individual risk factors are equivalent to the ontogenic level of environment, represented by aspects related to each individual’s personal history. The WHO *World Report on Violence and Health*⁷⁴ from 2002 identifies various individual risk factors for IPV perpetration by men: young age, heavy drinking, depression, personality disorders, low academic achievement, low income, witnessing or experiencing violence as a child. Ten years later, the WHO includes factors for the victimization of women: low levels of education; exposure to violence between parents; sexual abuse during childhood; acceptance of violence; and exposure to other forms of prior abuse.⁷⁵ Across the literature, the age factor remains a stable

⁷³ World Health Organization, n.d., *Health Topics, Risk Factors*, viewed April 2016, http://www.who.int/topics/risk_factors/en/

⁷⁴ World Health Organization, 2002. *World Report on Violence and Health*, at 96, viewed April 2016, http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf

⁷⁵ World Health Organization, 2012. *Understanding and addressing violence against women, Intimate partner violence*, viewed April 2016, http://apps.who.int/iris/bitstream/10665/77432/1/WHO_RHR_12.36_eng.pdf

predictor, in the sense that the risk for IPV victimization declines with the advancement in age.⁷⁶

For women, pregnancy status has also been found to be an important factor, as a Brazilian study shows that 9.3% of women experience postpartum IPV and the risks increase with low levels of education and lack of financial independence.⁷⁷ A meta-analysis of IPV during pregnancy in Africa found that the prevalence ranges between 2% to 57% and that HIV positive women are at higher risks for IPV victimization.⁷⁸ Other individual risk factors assimilated with women's victimization identified in Australia are not paying rent or mortgage in time, growing up in a one-parent household or having a long-term health condition.⁷⁹ In regards to women's economic status and professional or educational performance, there appears to be a paradox: low levels of education and poverty or lack of financial resources put women at risk for IPV victimization. At the same time, a study in Peru found that "employed women are more likely to be abused than are unemployed women; when a woman has higher status than her partner, the risk of abuse increases substantially".⁸⁰

In the European Union, the Special Barometer 344⁸¹ has inquired into community attitudes towards the causes of domestic violence against women. Participants from EU27 have identified the following potential causes for DVAW: alcoholism (95%) and drug abuse (92%), poverty and social exclusion (77%) and unemployment (75%). Religious beliefs are credited for affecting victimization by 60% of participants, as well as low levels of education and power distribution between sexes (58%) and the provocative behaviour of women (52%).

⁷⁶ See e.g., Stavrou, E., Poynton, S. and Weatherburn, D., 2016. Intimate partner violence against women in Australia: related factors and help-seeking behaviours. *BOCSAR NSW Crime and Justice Bulletins*, at 16; Capaldi, D.M., Knoble, N.B., Shortt, J.W. and Kim, H.K., 2012. A systematic review of risk factors for intimate partner violence. *Partner abuse*, 3(2), pp.231-280.

⁷⁷ Silva, E.P., Valongueiro, S., Araújo, T.V.B.D., Ludermir, A.B., 2015. Incidence and risk factors for intimate partner violence during the postpartum period. *Revista de saúde pública*, 49.

⁷⁸ Shamu, S., Abrahams, N., Temmerman, M., Musekiwa, A. and Zarowsky, C., 2011. A systematic review of African studies on intimate partner violence against pregnant women: prevalence and risk factors. *PloS one*, 6(3), p.e17591.

⁷⁹ *Supra* note 76, Stavrou et al., 2016.

⁸⁰ Flake, D.F., 2005. Individual, family, and community risk markers for domestic violence in Peru. *Violence against women*, 11(3), pp.353-373.

⁸¹ European Commission, 2010. *Special Eurobarometer 344, Domestic Violence against Women*, viewed May 2016, http://ec.europa.eu/public_opinion/archives/ebs/ebs_344_en.pdf.

The study shows that the general population thus acknowledges the existence of a complexity in risk factors influencing IPV victimization that matches the realities of the phenomenon.⁸²

Additional to individual risk factors, a person can experience exposure to a second category that will increase their chance of becoming a victim and perpetrator of IPV. This second category, of relational factors, is the social-ecology equivalent of the microsystem, represented by the individual's interactions within the couple and in the proximal vicinity of his daily activities. Relational factors are primarily the circumstances and dynamics within the couple, such as their communication styles, the way they share resources and information and the way they engage in conflict and resolve it. The WHO has identified the following relational risk factors: marital conflict, marital instability, male dominance in the family, economic stress, poor family functioning.⁸³ The list was expanded by the WHO in 2012 to include men having multiple partners and a disparity in educational attainment as relational risk factors.⁸⁴ The scholarship affirms the need for a deeper analysis of relational factors and how these interact:

Regarding relationship factors – which overall are understudied compared to contextual and developmental characteristics and behaviors of partners – relationship status (e.g., married, cohabiting, separated) is related to IPV, with married individuals being at lowest risk and separated women being particularly vulnerable. Low relationship satisfaction and high discord or conflict are proximal predictors of IPV, with high discord in particular being a robust predictor.⁸⁵

Relationship conflict and power imbalance are also risk factors in same-sex relationships, as a study from Hong Kong suggests, although relational dissatisfaction in homosexual relationships can stem from community factors:

Relationship conflict and anger management were crucial elements that contributed to both types of same-sex IPV. Specifically, if the degree of

⁸² id. at 79- 80: “*The fact that at least 50% of respondents across the EU cite 11 of the 12 potential factors being considered here as causes of domestic violence clearly demonstrates that this problem is generally perceived to have a very wide range of contributing factors*”.

⁸³ *Supra*, note 74, at 99-101

⁸⁴ *Supra*, note 75

⁸⁵ *Supra*, note 76, Capaldi et al.

conflict and disagreement is high across various life aspects, the likelihood of inflicting psychological and physical abuse is also high. In fact, same-sex partners may experience LGB-identity salient conflicts at times. Especially in a society where homophobic acts are condoned, such as Hong Kong, where no sexual orientation discrimination law exists, they may have to negotiate ways to display affection in public and about identity management in front of colleagues and friends.⁸⁶

The relationship between acculturation, migration and relationship distress has also been confirmed by studies in the Latino populations and thus relational risk factors may sometimes deviate from community ones.⁸⁷ Individual factors can also act as predictive or protective against relational factors. We can imagine how alcohol or substance abuse can cause relational dissatisfaction in a household, or how income and professional performance can influence the negotiation of power and allocation of resources between partners. The relationship between categories of risk factors is, at large, unpredictable and often represents an obstacle to providing holistic preventive responses to IPV.

The third layer of risk factors for IPV is represented by cultural and societal contexts and climates, equivalent to the social-ecology levels of exosystem and microsystem. These levels contain factors related to social and traditional ideologies and behavioural patterns that originate when an individual interacts with those outside of his or her proximity (family). The WHO explains that social and cultural norms are internalised by individuals in their pursuit of fitting within their societies although at times they might conflict with their own personal beliefs.⁸⁸ Globally, social and cultural factors are weak community sanctions against domestic violence, poverty, low social capital, traditional gender norms and social norms supportive of violence.⁸⁹ Examples of social norms supportive of IPV are the belief that divorce is shameful, that the man has the right to exercise discipline over a woman and/ or that he is socially superior.⁹⁰ A study on IPV characteristics in the Philippines has found that

⁸⁶ Chong, E.S., Mak, W.W. and Kwong, M.M., 2013. Risk and protective factors of same-sex intimate partner violence in Hong Kong. *Journal of interpersonal violence*, 28(7), pp.1476-1497.

⁸⁷ See, e.g. Garcia, L., Hurwitz, E.L. and Kraus, J.F., 2005. Acculturation and reported intimate partner violence among Latinas in Los Angeles. *Journal of interpersonal violence*, 20(5), pp.569-590.

⁸⁸ World Health Organization, 2009. Changing cultural and social norms that support violence, Series of briefings on violence prevention.

⁸⁹ *Supra*, notes 74 and 75

⁹⁰ *Supra*, note 88, at 5-6

domination by either gender of the decision-making process in the household is associated with higher rates of IPV:

IPV is significantly more common if husbands have the final say over decisions in the following six domains: buying the children clothes, choosing the children's school, taking the child to the doctor, gifts for relatives, major purchases, buying or selling land, and the wife traveling outside Cebu. As compared to jointly made decisions, IPV is significantly more common when the wives have the final say in the following seven domains: buying the children's clothes, choosing the children's school, buying or selling land, whether or not she works outside the home, traveling outside Cebu, and use and method choice in family planning.⁹¹

A similar study conducted in Colombia found that “emotional and physical violence are reduced in egalitarian households in which men and women make decisions jointly, yet the expectation that women who dominate decision making will also experience less battering was not confirmed”.⁹² Thus, it appears that a level of perfect balance and equality in the decision-making process within a couple is protective against IPV and deviating from that stability could result in women being victimized. Social factors are often influenced by individual ones and a study from Malawi observes that higher level of education among women can influence the ways they negotiate power within the household and during a couple’s crisis.⁹³ The same relationship between factors has been observed in the male population and it appears that “those who transgressed from the provider role by having lower education experienced more violence from their wives than men who did not”.⁹⁴

It can be recognized from the multiple risk factors associated with IPV on different levels, individual, societal or relational, that IPV is not an unpredictable phenomenon but one that might be simply difficult to map. The risk factors presented here arise from particular situations and contexts, most of which are consistent with unfulfilled human rights. Below,

⁹¹ Hindin, M.J. and Adair, L.S., 2002. Who's at risk? Factors associated with intimate partner violence in the Philippines. *Social Science & Medicine*, 55(8), pp.1385-1399.

⁹² Friedemann-Sánchez, G. and Lovatón, R., 2012. Intimate partner violence in Colombia: Who is at risk?. *Social Forces*, 91(2), pp. 663-688.

⁹³ Conroy, A.A., 2014. Gender, power, and intimate partner violence: a study on couples from rural Malawi. *Journal of Interpersonal Violence*, 29(5), pp.866-888.

⁹⁴ id.

the relationship between human rights and risk factors is presented and intimate partner violence is reconceptualised as a human rights violation. This assumption will dominate throughout the thesis and will display how States can lower or eradicate the risks associated with IPV victimization and perpetration by fulfilling their international human rights obligations.

5. The relationship between human rights and risk-factors for IPV

Due to the fact that international human rights are inter-dependent and interrelated, it is often possible that one violation will attract further violations of human rights.⁹⁵ In the case of IPV, like other social phenomena, the contexts and situations that allow or encourage the existence of the phenomenon usually constitute violations of human rights. Some risk factors are present in all victims and perpetrators whilst others are encountered in a limited number of cases. Therefore, institutions mandated with risk-assessment and prevention responsibilities should be equally attentive to recognizing evidence-based risk factors while maintaining an open attitude towards spotting new factors on a case by case basis. In this section, I will describe the general relationship between established risk factors for IPV and violations of international human rights. This is done to demonstrate that even before IPV occurs there are certain societal conditions that can ameliorate the possibility of IPV ever originating or be conducive to its manifestation. As States have international obligations to prevent intimate partner violence, that will be thoroughly analysed in Chapters III and IV, these obligations entail an uninterrupted State conduct aimed at stopping the violence from occurring or progressing. A greater part of State obligations is also represented by the State's responsibility to create a non-violent social climate where the risk factors for IPV are addressed through preventative approaches.

In the previous section of this chapter, I have discussed the following individual risk-factors: young age, heavy drinking, depression, personality disorders, low academic achievement, low income, witnessing or experiencing violence as a child, low level of education; exposure to violence between parents; sexual abuse during childhood; acceptance of violence; pregnancy and post-partum.

⁹⁵ Declaration, V., 1993. Programme of Action. World Conference on Human Rights (Vol. 25), I(5).

These risk factors can be linked to one or various individual human rights. Young age, witnessing or experiencing violence as a child and sexual abuse during childhood fall into the category of unfulfilled rights of the child. Articles 19 and 34 of the Convention on the Rights of the Child put forward the obligations of States to protect children against “all forms of physical and sexual violence, injury or abuse, neglect or negligent treatment”. The Committee on the Rights of the Child has recognised the link between the right of children to be free from violence, their further development and future violence:

A respectful, supportive childrearing environment free from violence supports the realization of children’s individual personalities and fosters the development of social, responsible and actively contributing citizens in the local community and larger society. Research shows that children who have not experienced violence and who develop in a healthy manner are less likely to act violently, both in childhood and when they become adults. Preventing violence in one generation reduces its likelihood in the next.⁹⁶

Moreover, exposure to domestic violence is explicitly named by the same Committee as a form of mental violence against the child.⁹⁷ Thus, unfulfilled rights of children put them at higher risks from perpetrating and being victims of IPV and the human rights violations attached to it. The relationship between parents and children and the presence or absence of aggression in their interaction is confirmed to have a significant impact on IPV perpetration later in life.⁹⁸ The idea of children as victims, perpetrators or bystanders in IPV will be discussed in Chapter IV, where the obligations contained in the CRC will be analysed. At this point, it is sufficient to acknowledge that unfulfilled rights of the child may increase exposure, victimization or perpetration of IPV and that consequently, IPV may in some cases attract violations of the right of the child.

⁹⁶ United Nations, 2011. Committee on the Rights of the Child (CRC), *General comment No. 13: The right of the child to freedom from all forms of violence*, CRC/C/GC/13 para 14.

⁹⁷ *id.* para. 21

⁹⁸ Kaufman-Parks, A.M., DeMaris, A., Giordano, P.C., Manning, W.D. and Longmore, M.A., 2018. Intimate Partner Violence Perpetration from Adolescence to Young Adulthood: Trajectories and the Role of Familial Factors. *Journal of Family Violence*, 33(1), pp.27-41: “Regardless of time or age, individuals who are exposed to parent-child physical aggression are significantly more likely to perpetrate violence against a romantic partner”.

Risk factors such as heavy drinking, personality disorders and depression are to be considered under the right to (mental) health put forward in article 12 of the ICESCR. States have international obligations "to take appropriate steps towards the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health".⁹⁹ At the same time, low academic achievement levels and low income are to be regarded as contributing causes that arise from unfulfilled cultural, social and economic rights such as the right to education and right to employment that affect men and women unequally. In that sense when economic dependency represents an obstacle for women to leave abusive relationships, their economic inequality might be traced back to unfulfilled rights contained in the CEDAW (article 10, education; article 11, employment). Of course, that is not to say that employed women with advanced educational backgrounds do not suffer from IPV, or that the State is responsible for guarantying women access into the labour market to prevent partner violence. The link between human rights and risk factors simply demonstrates the complexity of IPV and why prevention requires meeting an individual's needs and responding to the specific circumstances they face. If, for some, a successful response means greater measures for economic empowerment, for others these might simply be unhelpful. The relationship between economic empowerment, gender and IPV is difficult to understand as women's economic empowerment can sometimes lead to an increased risk of victimization:

Women's economic empowerment (WEE) could decrease domestic violence (DV) if: it increases women's household bargaining power and ability to leave a violent relationship; household poverty decreases; women learn skills that help them negotiate household gender power relations, or; at the community level, it contributes to shifts in attitudes, gender relations of power and a reduction of the acceptance or impunity surrounding DV. On the other hand, WEE could increase DV risk if: men use violence as a way to take or control women's income or resources, or to express dissatisfaction about shifting household roles [...].¹⁰⁰

⁹⁹ United Nations, 2000. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12 of the Covenant), E/C.12/2000/4.

¹⁰⁰ Bolis, M. and Hughes, C., 2015. Women's Economic Empowerment and Domestic Violence: Links and lessons for practitioners working with intersectional approaches.

At the same time, IPV attracts significant negative impacts on women's work performance; and violent behaviours are sometimes linked to labour. The literature reveals work interference tactics such as "undermining women's efforts to go work or to look for work", phone harassment at work or in-person harassment as manifestations of IPV:¹⁰¹

The consequences of batterers' actions on women's work included: inability to concentrate (71%), inability to perform job to best ability (63%), called in sick because too upset to go to work (59%), inability to go to work (53%), went home sick because of abuse (46%), quit job (27%), and lost job (21%).¹⁰²

As explained in a previous section, at a relational level, commonly acknowledged risk factors that influence IPV are: marital conflict, marital instability, male dominance in the family, economic stress, poor family functioning. The CEDAW has dedicated an article to marriage and family life. Under art. 16 of the CEDAW, States have international obligations to ensure equality "in all matters relating to marriage and family relations". These State obligations are also applicable to *de facto* relationships¹⁰³ and include the promotion of "the same rights and responsibilities during marriage and at its dissolution; the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation" and other parental and property rights. Not all relational risk factors can be connected to a particular individual right but States have obligations to take all appropriate measures to ensure equality within a relationship.¹⁰⁴

It can also be argued that it falls outside the scope of State interventions to prevent marital conflict and instability, as these factors are unique for every couple and hard to predict by State institutions. A certain level of privacy and autonomy in a relationship has to be balanced with a strong State initiative to prevent abusive relationships. States might not have a direct international obligation to address marital instability but positive relationships programs have become frequent in some countries; functioning as a successful tool for IPV

¹⁰¹ Swanberg, J., Macke, C., & Logan, T. 2006. Intimate partner violence, women, and work: Coping on the job. *Violence and Victims*, 21(5), pp. 561-78.

¹⁰² *id.*

¹⁰³ United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), 2013. *General Recommendation on Article 16, Economic consequences of marriage, family relations and their dissolution*, CEDAW/C/GC/29.

¹⁰⁴ *Convention on the Elimination of All Forms of Discrimination*, 1979. United Nations General Assembly, Article 3.

prevention.¹⁰⁵ Positive relations programs focus on teaching adults and often adolescents conflict management skills and help them improve partner dynamics. The programmes have been praised by the American Centre for Disease Control and Prevention for having the potential to lower the risk for “perpetration and victimization of IPV”.¹⁰⁶ In Australia, numerous courses are available through Relationships Australia, an organization offering counselling, mediation and dispute resolution, as well as formative courses designed at enhancing the quality of interpersonal relationships.¹⁰⁷

In the United Kingdom there are also early intervention programmes for girls aged 11 to 16 aimed at educating about safe relationships and to boost self-esteem.¹⁰⁸ In Australia, the Love Bites Program targeted more than 100,000 teenagers aged 14-16 and “promoted interactive education workshops on Domestic and Family Violence”.¹⁰⁹ Risk factors such as marital instability and dissatisfaction have thus the possibility of being reduced by interventions aimed at helping couples deal with stressors in a positive and productive way and finding alternative responses to violence. By introducing such programmes States should comply with some of the requirements of article 16 of the CEDAW that demands that States take all appropriate measures to ensure equality in the family life. An additional examination of article 16 can be found in Chapters III and IV.

Finally, regarding the last category of risk-factors (community and societal risk-factors), these have been previously named to be weak community sanctions against IPV, poverty, low social capital, traditional gender norms and social norms supportive of violence. A combination between these factors plays a significant role in predicting IPV and “these norms are often perpetuated by religious or cultural justification, deterring action by stakeholders who are critical to addressing IPV prevention”.¹¹⁰

¹⁰⁵ Niolon, P.H. and Centers for Disease Control and Prevention, 2017. *Preventing intimate partner violence across the lifespan: A technical package of programs, policies, and practices*. Government Printing Office.

¹⁰⁶ *id.* at 15-16.

¹⁰⁷ Relationships Australia n.d., viewed November 2017, <https://www.relationships.org.au/what-we-do/services>.

¹⁰⁸ See Kent Domestic Abuse Consortium, n.d., *Positive Relationships Programme*, viewed November 2017, <http://kdac.org.uk/positive-relationships/>

¹⁰⁹ National Association for Prevention of Child Abuse and Neglect, n.d., *Love bites Program*, viewed November 2017, <http://napcan.org.au/our-programs/love-bites/>

¹¹⁰ World Bank Group, The Global Women’s Institute, 2016. *Community-Based Approaches to Intimate Partner Violence, A review of evidence and essential steps to adaptation*, viewed October 2017, <http://documents.worldbank.org/curated/en/907511467996712161/pdf/AUS16688-REVISED-Community-Programs-SinglePages.pdf>.

Community and societal risk-factors can be associated with the rights to equality and non-discrimination; the obligations of States to eradicate poverty and the obligation of States to eradicate gender stereotypes. Scholars using the social-ecological approach to intimate and domestic violence agree that there is a strong link between gender equality and the prevalence of these manifestations and that community interventions are usually effective for lowering the risks for IPV.¹¹¹ In relation to gender stereotypes, the CEDAW (articles 2(f) ; 5 and 10(c)) and CRPD (8(1b)) contain expressive State obligations to combat traditional gender norms.¹¹² It has been suggested that all other international human rights treaties infer obligations to combat stereotyping through the precept of discrimination.¹¹³

At the same time, poverty can represent a violation of several human rights and have a peculiar impact on IPV manifestations. It has been suggested that poverty increases other negative impacts of IPV such as social isolation, powerlessness and stress and decreases the mental abilities of coping.¹¹⁴

The duty to implement social protection policies to expand the protection available to persons living in extreme poverty flows directly from a number of human rights, in particular the right to social security and the right to an adequate standard of living, which are enshrined in the Universal Declaration of Human Rights, several international and regional human rights treaties, conventions of the International Labour Organization (ILO) and national constitutions. Ensuring access to social protection is thus not a policy option, but a State obligation under international human rights law.¹¹⁵

¹¹¹ Michau, L., Horn, J., Bank, A., Dutt, M. and Zimmerman, C., 2015. Prevention of violence against women and girls: lessons from practice. *The Lancet*, 385(9978), pp.1672-1684.

¹¹² United Nations, 2013. *Gender stereotyping as a human rights violation*, viewed April 2016, <http://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>

¹¹³ id.: “Many human rights treaty bodies have recognised that the rights to non-discrimination and equality contain an implied obligation to address stereotypes/stereotyping. As the obligations to address stereotypes/stereotyping are crosscutting, they should be read together with all substantive rights and freedoms as well as in their own right”.

¹¹⁴ Goodman, L.A., Smyth, K.F., Borges, A.M. and Singer, R., 2009. When crises collide: How intimate partner violence and poverty intersect to shape women’s mental health and coping?. *Trauma, Violence, & Abuse*, 10(4), pp.306-329.

¹¹⁵ United Nations General Assembly, 2010. *Human rights and extreme poverty*, A/65/259, Note by the Secretary-General, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, para. 10.

Among some of the human rights linked to poverty are the right to education, health or the right to basic sanitation. States do not have an explicit human rights obligation to actively lessen poverty but poverty usually arises as a consequence of unfulfilled economic, social and cultural rights.¹¹⁶

In the following chapters, I discuss in much greater detail the content of State obligations to prevent IPV through fulfilling certain economic, social and cultural rights and creating a climate of equality by challenging gender stereotypes.

The present chapter has served to introduce the concept of IPV and its core elements; as well as the different types of abusive manifestations that can occur between partners. Through selected scholarship materials from diverse areas of study such as criminology, psychology, legal science and human rights, I presented the main risk-factors associated with IPV and presented arguments for why it would be beneficial to view IPV as a phenomenon without invariable causes but mediated by certain motivations and risk-factors. I have also signalled literature gaps related to reproductive coercion as IPV; motivations for IPV; and online IPV. This chapter's aim was to provide information and background regarding the state of knowledge for IPV and to introduce the relationship between international human rights law and IPV. The latter part will continue to play a central role in the thesis. In the next chapter, I will identify State obligations to prevent IPV and signal the existence of a link between risk-factors and human rights.

¹¹⁶ *id.*

Chapter III: Intimate partner violence regulation in the international human rights system

1. Introduction
2. Intimate partner violence as a breach of individual human rights
3. Violence against women and the UN human rights system
4. CEDAW: The Convention and Committee's relevance for intimate partner violence
5. Complementary regulatory instruments

1. Introduction

This chapter explores the concept of IPV, its standing, regulation and deriving obligations within the international human rights system. The objective of this chapter is to identify States' human rights obligations related to the prevention and protection against IPV. An associated objective is to establish the gaps and shortcomings of States' prevention archetype dictated by the emerging due diligence doctrine that expands the dichotomy of State obligations. Due diligence requires broader interventions, not solely criminal and punitive in nature, but interventions that tackle societal risk factors and their impact on individuals involved in romantic relationships. To that end, international treaties such as CEDAW, ICCPR, ICESCR, CRPD and CERD will be examined to determine the existence of intersectional IPV obligations and their content within the UN system. General Comments of human rights bodies, State Reports and other regulatory instruments, including soft law and customary rules will be discussed in order to observe the inter-dependence between the human rights of those exposed to IPV. This will serve to later identify the normative content of these obligations and establish how a holistic approach can replace the traditional criminal law model of prevention with strategies that recognize IPV as a complex societal issue. This work is expanded upon in the next chapters, when the concept of State responsibility is discussed, developing on the notion of due diligence and how broader State interventions are required to comply with the obligations identified in the present chapter.

2. Intimate partner violence as a breach of individual human rights

All individuals have an equal and universal right to live a life free from violence. This concept represents the cornerstone of the international human rights system and an expression of various precepts of the International Bill of Rights. The right to live a life free of violence reflects and also relies upon the interdependence and indivisibility of human rights. This “long-accepted and consistently reaffirmed principle” related to protection from violence requires, depending on the circumstances, the activation and realization of multiple human rights- *inter alia*- the right to life, the right to equality and the prohibition of torture and ill-treatment.¹ The Universal Declaration of Human Rights (UDHR) states:

Everyone has the right to life, liberty and security of person [and] everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²

Although the UDHR is generally regarded as a non-binding document, its commitment to the full realization of human rights is rarely questioned due to its contribution to the formation of custom or the strong link it possesses with the rules contained in international treaties.³ Moreover, it has become clear that most precepts of the Declaration, especially the right to life, have constituted the body of *jus cogens* “a set of rules of international law from which no derogation or reservation is permissible”.⁴ Although *jus cogens* has a theoretical character and a scholarship origin “empirical evidence suggests that [the] systemic dimension of *jus cogens* may produce significant legal effects” and despite its disputed standing the scholarship agrees that *jus cogens* reflects the “moral aspiration of the law thus materialized in international law”.⁵ *Jus cogens* is regulated by the Vienna Convention on the Law of Treaties in its article 53 that remarks peremptory norms and their status in international law. As the Committee against Torture itself declares, “since the adoption of the Convention against Torture, the

¹ United Nations, n.d. *Fact Sheet No.22, Discrimination against Women: The Convention and the Committee*, Office of the UN High Commissioner for Human Rights.

² *Universal Declaration of Human Rights* (UDHR) 1948, (resolution 217 A), adopted 10 December 1948.

³ See Rehman, J., 2009. *International Human Rights Law*, Second Ed, Harlow: Longman at82: “a number of rights contained in the UDHR have become so firmly established in international law that they are now treated as having a *jus cogens* character”.

⁴ *id.* at 25

⁵ Bianchi, A., 2008. Human rights and the magic of *jus cogens*. *European journal of international law*, 19(3), pp.491-508.

absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law”.⁶ In relation to the right to life, prohibition of torture and other inter-connected rights that constitute the right to live a life free from violence I will highlight the most important precepts contained by binding international human rights instruments.

2.1 The right to life and intimate partner violence

The ICCPR declares that “States [...] undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant” and in General Comment 18, the UN Human Rights Committee includes violence against women as a form of discrimination prohibited by the Covenant.⁷ The ICCPR’s Article 6 protects the right to life and Article 7 prohibits torture or cruel, inhuman or degrading treatment or punishment and declares regarding the latter “it is also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority”.⁸

The right to life is a *jus cogens* imperative, a non-derogable right but it is not an absolute percept of international human rights law.⁹ The right to life falls under a series of limitations and exceptions. The three most important mentions regarding the right to life throughout the literature have been those concerning (a) the legal protection of life, (b) the prohibition of arbitrariness and (c) the exception of the death penalty.¹⁰ The legal protection of life must not be interpreted narrowly as to be understood as a mere obligation to regulate the right to life domestically but as an obligation to adopt positive measures for its protection derived from the mention of Article 6 of the concept of *inherency*.¹¹ The adoption of positive and anticipative measures is linked to a due diligence requirement aimed at preventing violations of the right to life.

⁶ *International Covenant on Civil and Political Rights*, 1976. United Nations, Treaty Series, vol. 999, at 171; United Nations Human Rights Committee, 1989. *CCPR General Comment No. 18: Non-discrimination*.

⁷ *id.*

⁸ United Nations Human Rights Committee, 1992. *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, para. 2.

⁹ See ICCPR Article 4(2) mentions the right to life as a non-derogable right: “No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision” in relation to public emergency situations. See Nowak, M., 2005. *CCPR-Commentary*. Second Edition. Kehl. at 121-124.

¹⁰ See Edwards, A., 2010. *Violence against women under international human rights law*. Cambridge University Press; See Nowak, M., 2005. *CCPR-Commentary*. Second Edition. Kehl. at 121-124

¹¹ United Nations, 1982. *General Comment 6: The Right to Life*, UN Human Rights Committee, para. 5

In regards to the prohibition of arbitrariness, the Human Rights Committee has declared in 1982 by means of the General Comment 6: “States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities”.¹²

Although initially designed to address the illegal or unwarranted conduct of State officials, the prohibition of arbitrariness has been extended upon in the recent deliberations for the adoption of a new General Comment that addressed the right to life.¹³ In 2016, the first Draft General Comment mentioned arbitrariness in relation to gender-based violence and offered a more thorough interpretation of the right to life and its limitations:

The right to life concerns the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as their legitimate expectation to enjoy a dignified existence. Deprivation of life involves a deliberate or otherwise foreseeable and preventable infliction of life-terminating harm or injury that goes beyond mere damage to health, body integrity or standard of living. [States] must also take all suitable measures, which can reasonably be expected from them, to protect the right to life of individuals against deprivations caused by persons or entities not acting on behalf of the State.¹⁴

The new draft of the General Comment on the right to life contains two important interpretations that carry great relevance for IPV: the possibility of jeopardizing the enjoyment of the rights by means of omissions or acts that might cause premature death and the obligation of States to prevent deprivations of life caused by private individuals. The same draft General Comment explains the concepts of arbitrariness and legal protection in relation to gender-based violence:

¹² id. para. 3

¹³ In 2015, the Human Rights Committee held a half-day discussion on the topic of preparing a new General Comment related to article 6 at its 114th session celebrated in Geneva. To this moment, only the Draft General Comment has become available: CCPR/C/GC/R.36/Rev.2.

¹⁴ id. Draft General Comment 36, CCPR/C/GC/R.36/Rev.2., para. 3,5,11.

The deprivation of life of individuals through acts or omissions that violate provisions of the Covenant other than article 6 is, as a rule, arbitrary in nature. This includes, for example, [...] gender-related violence involving the application of lethal force against women on account of discriminatory attitudes. The duty to protect life also imposes on States parties a due diligence obligation to take long-term measures to address the general conditions in society that may eventually give rise to direct threats to life.¹⁵

The interpretations made by the first draft of the General Comment 36 target the acts of non-State actors and the omissions of State officials in relation to the protection of the right to life. This clarification and specific mention of due diligence responds well to the feminist critiques by which Article 6 was not interpreted to cover the protection of “women’s everyday lives”.¹⁶ Feminist critiques of Article 6 were justified due to the initial construct of the right to life that was male-centric and responded to the fact that “men are disproportionately affected by arbitrary deprivations of life by the State, by capital penalties, as soldiers in armed conflict, and as the principal subjects of policies and laws on military conscription and service”.¹⁷ In 2017, the revised draft of the same General Comment contained mentions of “pre-existing patterns of violence” and encouraged States to take “special measures of protection” for individuals who suffered severe threats and are exposed to said patterns, for the protection of their right to life; including IPV victims as individuals in need of special protection.¹⁸

IPV that results or escalates into the killing of women has been defined as femicide in contrast to the killing of men that could simply be defined as intimate partner homicide. The topic of femicide has dominated recent discussions within the institutionalised human rights arena:

¹⁵ id. paras. 21 and 28

¹⁶ Edwards, A. 2011. *Violence Against Women Under International Human Rights Law*, Cambridge University Press.

¹⁷ id. at 278-279

¹⁸ United Nations Human Rights Committee, 2017. *Draft General Comment 36*, Revised draft prepared by the Rapporteur, viewed September 2017, http://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6_EN.pdf

The term ‘femicide’ was originally defined as the killing of women but has been adapted over time to represent the act of killing women because of their gender. In this sense femicide is understood to be motivated by misogyny and prejudice against women. For a case to be considered femicide there must be an implied intention to carry out the crime and a demonstrated connection between the crime and the gender of the victim. Several crimes against women that can be recognised as femicide include sexual murders, mortality resulting from domestic or family violence, and cultural or institutional violence that result in mortality.¹⁹

Although IPV can be fatal and it is now a well-known fact that left unaddressed by State officials, it can result in homicide, it is more often conceptualised as “an issue of inequality, violence *per se*, or degrading treatment”; and international human rights treaty bodies have yet to deal with the right to life and IPV in individual complaints.²⁰ In the case of *A.T v Hungary*, the facts as presented contain multiple references to the right to life of the victim: “she feared for her life, “physical and mental health and life have been at serious risk”, “her life continues to be in danger”.²¹ Despite these references, the CEDAW Committee considered and decided the case under other provisions, most likely due to the absence of a provision on the right to life in the CEDAW Convention. Nevertheless, regional human rights bodies have recently created a strong jurisprudence linking cases of domestic violence (including violence against children) with the right to life. Since 2007’s *Kontrovà v. Slovakia*, the European Court of Human Rights has decided multiple cases of domestic violence in which it found violations of the right to life.²² Recently, in *Halime Kılıç v. Turkey* the ECtHR has found “in particular, that even though the Turkish authorities had been informed of the genuine and serious threat to Ms Civek’s life and despite her continued complaints of threats and harassment, they had failed to take the measures reasonably available to them in order to prevent her being murdered by her husband”.²³ The Inter-American Court of Human Rights also contributed to the developing jurisprudence on the

¹⁹ Femicide 2013. *A Global Issue that Demands Action*, Academic Council on the United Nations System (ACUNS) Vienna Liaison Office, Second Edition, at 37.

²⁰ *Supra*, note 16, at 296

²¹ *A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005; see paras. 1.2, 2.4 and 3.6.

²² ECtHR Press Unit, 2018. *Factsheet – Domestic violence*, viewed June 2018, http://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf

²³ ECtHR Registrar of the Court, 2016. *Turkish authorities did not effectively protect the life of a woman threatened with death by her husband*, ECtHR 227 (2016).

right to life and domestic violence, especially in the case of *Jessica Lenahan (Gonzales) v United States*:

The protection of the right to life is a critical component of a State's due diligence obligation to protect women from acts of violence. This legal obligation pertains to the entire state institution, including the actions of those entrusted with safeguarding the security of the State, such as the police forces. It also extends to the obligations a State may have to prevent and respond to the actions of non-state actors and private persons.²⁴

With the pending adoption of the General Comment 36 by the Human Rights Committee and new developments in the regional systems, we might see a change in human rights litigation. IPV complaints that meet the threshold of severity, could be oriented less towards the CEDAW, and more towards the UN Committee against Torture or the UN Human Rights Committee. At the same time, in IPV cases, the right to life will purport a stronger positive obligation of the State to preserve life and ensure that individuals live a dignified existence, free from violence. Through the medium of State officials and their active duties to preserve life, States will be open to greater international liability if and when a case displays a foreseeable risk for the life of one of the partners. The element of foreseeability is central to the doctrine of due diligence and will be discussed later in the thesis.

2.2 Intimate partner violence and the prohibition of torture

The right to live a life free of violence is also protected under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):

The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by

²⁴ *Lenahan v. United States*, Inter-American Commission H.R. 2011., Judgement July 21, 2011, para.128.

or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²⁵

The Committee against Torture has explained in its General Comment 2 that States bear responsibility under the Convention for acts perpetrated by private actors, where States, through omissions or negligence, have failed to exercise due diligence:

Where State authorities or others acting in official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission.²⁶

In the same General Comment, the Committee explicitly mentions domestic violence and the connection between abusive acts and failures of due diligence, by underlining that: "the Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking".²⁷ Additionally, the inclusion of domestic violence within the prohibition of torture can be observed in *Opuz v Turkey* where the ECtHR confirmed that "the violence suffered by the applicant, in the form of physical injuries and psychological pressure, were sufficiently serious to amount to ill-treatment within the meaning of Article 3 of the

²⁵ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984. United Nations, Treaty Series, vol. 1465, at 85, Article 1.

²⁶ United Nations Committee Against Torture (CAT), 2008. *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2, para. 18; Joseph, S. and Castan, M., 2013. *The international covenant on civil and political rights: cases, materials, and commentary*. Oxford University Press. at 226: "The CAT Committee has explicitly adopted a standard of due diligence in deciding whether an official has acquiesced in activity which contravene CAT. It nevertheless seems that it is a stricter standard of due diligence than that which generally applies under the ICCPR".

²⁷ *id.*

Convention”.²⁸ This jurisprudential recognition came years after the scholarship established a link between IPV and torture. As Nowak, former UN Special Rapporteur on Torture explained, since the 1990’s the concept of torture has been broadened to include non-traditional forms such as private torture carried out by non-State actors.²⁹

Copelon also brought forward this correlation between IPV and torture in 1994 as “neither original nor new” but at that time, conceded that the connection was preferred more by feminists rather than torture experts.³⁰ Drawing from the above-mentioned definition of torture from the CAT, Copelon explains that there are 4 elements necessary to trigger the prohibition of torture: (1) severe physical and/or mental pain and suffering; (2) intentional infliction; (3) specified purposes; and (4) some degree of official or quasi-official involvement, whether active or passive.³¹

Regarding physical and/or psychological suffering, it is clear that IPV *generally* has a central element of pain, that usually escalates over time within the cycle of abuse. Whilst there are episodes or forms of intimate partner abuse that do not involve suffering (i.e. financial abuse, snooping, etc.), the majority of episodes might involve a fluctuating degree of pain which often involves long-term physical and psychological distress. Referring to the element of intentionality, Copelon warns that State connivance in domestic violence usually entails national legal systems enabling defences of impulsivity, defences of honour or justifications based on alcohol abuse and intoxication. She proposes that the analogy still stands due to the fact that the main element of intentionality is the culpability-accountability binary. In her words, “human rights should counter the traditional complicity of law and custom in giving men license to vent their violent impulses on women”.³²

²⁸ *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009, para. 161.

²⁹ Nowak, M., 2012. Torture: Perspective from UN Special, Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment. *NTU L. Rev.*, 7, at 465: “Torture is a crime committed by state officials. Purely private torture usually does not fall under this definition, though the Convention speaks of the infliction of pain or suffering by or at the instigation or with the consent or acquiescence of a public official. This means that if a mob is torturing or ill-treating a person and police officers are standing next to them and do not intervene at all, this would amount to torture by acquiescence. However, in general since the 1990s the very concept of torture and ill-treatment has also been applied in relation to private forms of torture, particularly in relation to women and children. Consider traditional practices against women such as female genital mutilation, sati or honour crimes; domestic violence against children or women can be considered as torture by acquiescence if the state is not acting under the principle of due diligence”.

³⁰ Copelon, R., 1993. Recognizing the egregious in the everyday: Domestic violence as torture. *Colum. Hum. Rts. L. Rev.*, 25, at 291.

³¹ *id.*, at 308

³² *id.* at 327-329

But not all forms of partner violence intentionally inflicted amount to torture. The international human rights system prohibits acts inflicted “for punishment; for intimidation and coercion; or for discrimination”.³³ As explained by Copelon, throughout history, torture has been seen to revolve around an interrogation and inflicted with the purpose of eliciting information. That does not exclude the analogy between IPV and torture due to the existence of “domestic interrogation” aimed at controlling, humiliating and harming the partner in question.³⁴ Although in general the CAT refers to acts perpetrated by State actors and individuals acting in an official capacity, interpretations of the Human Rights Committee show that States are mandated to ensure protection against torture when such acts are “inflicted by people acting in their official capacity, outside their official capacity or in a private capacity”.³⁵

Given that IPV frequently causes physical and psychological harm, international human rights law offers equal protection for all individuals against IPV *via* the prohibition of torture or cruel, inhuman and degrading treatments and States are to be held accountable for this violation if they fail to prevent such acts. Understanding the similarities between torture and IPV and framing episodes of IPV as torture is an essential step towards prevention, because it highlights State complicity. However, not all IPV episodes or cases amount to torture and there is a whole dimension of *severity* that has to be explored to determine whether a particular episode or case of abuse amounts to torture as defined by the CAT of inhuman and/or cruel treatment or degrading treatment as prescribed by Article 7 of the ICCPR. Elements such as *purpose*, *intention* and *powerlessness* of the victim separate different types of ill-treatment from torture and the conceptualization will have to be done on a case by case basis.³⁶ Nevertheless, a few remarks within the scholarship and case-law might allow us to differentiate. Cruel and inhuman treatment can be defined as “the infliction of severe pain or suffering, whether physical or mental [...] with the consent or acquiescence of a public official; such conduct can be either intentional or negligent, with or without a particular purpose”.³⁷ On the other hand, degrading treatment can be defined as “the infliction of pain or suffering which aims at *humiliating* the victim”.³⁸

³³ *id.*

³⁴ *id.* at 333

³⁵ *Supra*, note 8

³⁶ Nowak, M., McArthur, E., 2008. *The United Nations Convention Against Torture. A Commentary*. New York City: Oxford University Press.

³⁷ *id.*

³⁸ *id.*

Intention is an important prerequisite of torture; one cannot torture by negligence. It might be inhuman or cruel treatment but can never amount to torture. [...] This is what distinguishes torture from cruel or inhuman treatment. It is a situation where one individual exercises absolute control over another individual.³⁹

Acquiescence is an additional and important element of torture. It reflects the extension of State responsibility to encompass the acts of private individuals and represents a form of inaction, of failure to “take appropriate legal and factual measures against wide spread and well known violence by private parties”.⁴⁰ It could rather be seen as an exception to the rule of State responsibility and it is applied to a limited number of cases that usually involve violence against women and children, such as genital mutilation, domestic violence and trafficking. A form of acquiescence is illustrated by Nowak as private inter-violence in detention facilities:

Tolerating the torture of fellow detainees by other prisoners obviously amounts to torture by acquiescence and is a very widespread method. The prison guards do not want to do the dirty job so they ask the prisoners to torture their fellow detainees.⁴¹

In cases of IPV, acquiescence can be a practice or a conduct of police officers, medical personnel or any State official involved in the initial phases of abuse that fail to prevent the development of subsequent violence. As such, this could represent the equivalent of the “duty to act” or “commission by omission”, concepts under debate within the international criminal law scholarship.⁴² As Berster explains, the liability for omission is strictly connected with the notion of duty under domestic law, be that in the form of a contract, statute or code of practice.⁴³ As defined in Black’s Law Dictionary, an *omission* is “the neglect to perform what

³⁹ *Supra*, note 29, at. 470

⁴⁰ *Supra*, note 36, at 569

⁴¹ *Supra* note 29, at 495

⁴² Berster, L.C., 2010. 'Duty to Act' and 'Commission by Omission' in International Criminal Law. *International Criminal Law Review*, 10(5), pp.619-646.

⁴³ *id.* at 629-631

the law requires”.⁴⁴ In this case, the law requires action, protection and *a contrario sensu*, a lack of passivity.

The comparison of acquiescence to what civil jurisdictions call “commission by omission” illustrates that a key element of the duty of State officials, in cases of IPV, is to investigate, prosecute and prevent further abuses. An omission can become equivalent to committing a wrongful act, sanctioned by the human rights system. It is the fact that State officials are in breach of their own duties under the law that will attract the possibility to extend this responsibility to the State in the international human rights system. As Qureshi argues, conceptualising IPV episodes as torture, inhuman or degrading treatment and understanding the duties established by national law for public officials, on a case by case basis, to prevent abuse are key considerations to building a stronger discourse of IPV as a breach of the human right to be free from torture.

Once recognised as torture, the ‘privacy’ and the ‘normalcy’ aspect of domestic violence against women will be challenged and be more open to scrutiny. It will no longer be deemed as an issue outside of state intrusion, it would rather be universalised and accordingly receive the attention it deserves.⁴⁵

2.3 Intimate partner violence and the right to sexual and reproductive health

As mentioned in the previous chapter, one particular form of IPV slowly acknowledged and studied is reproductive coercion. This type of IPV consists of various controlling behaviours aimed at either provoking pregnancy, interfering with birth-control methods or creating pregnancy pressure.⁴⁶ Among the few studies that deal with this topic, most have either started inquiring about the prevalence of this type of IPV or discussed strategies for patient

⁴⁴ Black’s Law Dictionary, 1979. Fifth Ed, St. Paul Minn, West Publishing Co.

⁴⁵ Qureshi, S. 2013. Reconceptualising Domestic Violence as 'Domestic Torture'. *Journal Of Political Studies*, 20(1), pp. 35-49.

⁴⁶ See Park, J., Nordstrom, S.K., Weber, K.M. and Irwin, T., 2016. Reproductive coercion: uncloaking an imbalance of social power. *American journal of obstetrics and gynecology*, 214 ; Sutherland, M.A., Fantasia, H.C. and Fontenot, H., 2015. Reproductive coercion and partner violence among college women. *Journal of Obstetric, Gynecologic, & Neonatal Nursing*, 44(2), pp.218-227; John, N.A. and Edmeades, J., 2018. Reproductive Coercion and Contraceptive Use in Ethiopia. *Etude de la Population Africaine*, 32(1): “Reproductive coercion can be critical for understanding how controlling behaviours and violence operate in the reproductive arena and impact family planning decision-making. However, more research is needed to understand the nuances of how reproductive coercion manifests in different settings to develop context specific measures”.

care and intervention aimed at gynaecologists or family planning professionals.⁴⁷ It is yet poorly understood how and if reproductive coercion can be criminalized. In the Canadian case of *R. v Hutchinson* the male partner who poked holes in his condom to get his girlfriend pregnant without her consent has been tried for aggravated sexual assault and found guilty.⁴⁸ The Canadian courts found that consent can be vitiated by fraud and that consent to sexual activity is not an equivalent for consent to unprotected sexual activity.⁴⁹

The “sexual activity in question” does not include conditions or qualities of the physical act, such as birth control measures or the presence of sexually transmitted diseases. Here, the “sexual activity in question” was sexual intercourse and the complainant voluntarily agreed to it. On the question of whether her agreement to the “sexual activity in question” was vitiated by fraud, the dishonesty is evident and admitted.⁵⁰

Civil law remedies for reproductive coercion might also be available in some jurisdictions in the form of negligent misrepresentation, as it was in the American case of *Alice D. v. William M.*, where a man fraudulently misrepresented himself as being sterile and left his partner pregnant.⁵¹ According to the manner in which domestic laws allow for the interpretations of consent, and include civil elements of negligence, reproductive coercion might or might not constitute a civil or criminal offence, depending on the State in question. However, this form of IPV can constitute violations of human rights, specifically those deriving from the right to sexual and reproductive health. The CEDAW Convention in its Article 16 establishes that States must take all appropriate measures to guarantee that women enjoy “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”. The obligation in Article 16 must be read in conjunction with other articles of the Convention, most importantly, Article 12 that establishes that States must combat discrimination in the field of health care and provide women with access to family planning services.⁵² The topic of reproductive coercion and human rights has been developed by Dr. Carmel Shalev, an expert

⁴⁷ *id.*

⁴⁸ *R. v. Hutchinson*, 2014. SCC 19, [2014] 1 S.C.R. 346. [Supreme Court of Canada]

⁴⁹ *id.*

⁵⁰ *id.*

⁵¹ *Alice D. v. William M.*, 1982. 450 N.Y.S.2d 350, 353–55.

⁵² *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979. United Nations, Treaty Series, vol. 1249; see Articles 12 and 16.

member of the CEDAW, that used the concept of autonomy to link the human rights at stake in cases of reproductive coercion:

Autonomy is intimately and intrinsically connected with many fundamental human rights, such as liberty, dignity, privacy, security of the person, and bodily integrity. These form the basis for asserting rights to informed consent and confidentiality in relation to health services and health care. Moreover, article 15 guarantees women's right to equality before the law and to full legal capacity.⁵³

Since then, other scholars have also argued that reproductive coercion represents a threat to human rights and “theft of personal autonomy” and have linked this form of IPV to patriarchal attitudes.⁵⁴ The Beijing Platform for Action contains detailed programmatic principles and guidelines related to the right of women to sexual and reproductive health.⁵⁵ The guiding document links reproductive health and freedom with freedom from coercion and discrimination, integrity of person and equality before the law.⁵⁶ In 2016, the UN Committee on Economic, Social and Cultural Rights adopted its General Comment 22 that refers to sexual and reproductive health.⁵⁷ The Committee mentioned that the right to sexual and reproductive health is derivative from Article 12 of the ICESCR (right to health) and entails a number of legal freedoms:

The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, over matters concerning one's body and sexual and reproductive health.⁵⁸

Pregnancy is one element of sexual coercion although an additional concern is also represented by the possibilities of contracting a sexual transmitted infection or HIV, a scenario that makes it more imperative to ensure that the right to health is guaranteed and that

⁵³ Shalev, C., 1998. *Rights to Sexual and Reproductive Health - the ICPD and the, Convention on the Elimination of All Forms of Discrimination Against Women*, International Conference on Reproductive Health, Mumbai (India), 15-19 March 1998.

⁵⁴ Trawick, S.M., 2012. Birth Control Sabotage as Domestic Violence: A Legal Response. *California Law Review*, pp.721-760.

⁵⁵ *Beijing Declaration and Platform for Action*, 1995. Women, U. N., In Fourth World Conference on Women (Vol. 15). paras 95-96.

⁵⁶ *id.*

⁵⁷ United Nations Economic and Social Council, 2016. *General comment No. 22 on the right to sexual and reproductive health* (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22

⁵⁸ *id.* para. 5

individuals are protected against this form of IPV.⁵⁹ More research is indeed necessary for reproductive coercion, to fully understand the phenomenon and better protect individuals from it. At the same time, the international human rights system must pay more attention to sexual IPV and new forms of violence against women; and demand that reproductive coercive behaviours are duly criminalized and that individuals suffering this abuse have domestic legal remedies available.

2.4 Intimate partner violence and disability

The right to live a right free of IPV is also acknowledged by the Convention on the Rights of Persons with Disabilities (CRPD) *via* various precepts. Article 16 prohibits exploitation, violence and abuse and is innovative in the sense that imposes an expressive obligation for States to ensure that people with disabilities are protected from a climate of domestic violence. Their protection is direct and domestic violence-centric. Unlike CEDAW where women are protected from domestic violence by means of individual human rights -or alternatively- equality rhetoric, the CRPD demands direct and immediate protection against IPV.

States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.⁶⁰

The reason for this specific provision may lie in the fact that individuals with disabilities face DV and implicitly IPV in a unique way. The scholarship recognizes that “how this violence manifests depends upon the impairments experienced by a survivor” and that individuals “who require support from their partners for daily tasks can be especially vulnerable to abuse”.⁶¹ Another reason for the wording of Article 16 is that the CRPD is the latest international human rights treaty and addresses modern societal challenges. The CRPD

⁵⁹ American College of Obstetricians and Gynecologists, 2013. Committee on Health Care for Underserved Women, Number 554, *Committee Opinion*, viewed October 2017, <https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co554.pdf?dmc=1&ts=20171117T0743048444>

⁶⁰ *Convention on the Rights of Persons with Disabilities*, 2007. Resolution adopted by the General Assembly, 24 January 2007, A/RES/61/106.

⁶¹ Douglas, Heather, 2014. Disability and domestic violence: protecting survivors' human rights. *Griffith Law Review*, 23(4), pp.405–433, at 410.

represents a legal instrument that aims to respond to the diversity of issues that human rights face in modern times and addresses intersectionality and the interdependence of human rights more directly than other legal instruments.

Physical or intellectual disability is associated with a higher risk for IPV victimization due to a particular vulnerability that originates either in greater dependence on their partner or “lack supportive social networks, jobs, interests and activities”.⁶² Disabled men and women alike can be the victims of multiple forms of abuse including sexual violence, physical violence, aggression and stalking, although a study in the US demonstrated higher rates of women victimization.⁶³ Studies reviewing the disability literature suggest that women with disabilities are more likely to be abused than women without disabilities and men;⁶⁴ and that violence against women with disabilities is peculiar and diverse and can consist of withholding medicine or removing assisting wheelchairs from use.⁶⁵ The idea that IPV for individuals with disabilities takes particular forms and needs a special intervention is reiterated in the literature:

With recent research beginning to explore the prevalence and nature of IPV and abuse among women with disabilities, it is becoming clear that women with disabilities have experiences of abuse that are not only similar to those of nondisabled women, but also different. Traditional domestic violence theory and consequent practice models have been insufficient in identifying abuse among women with disabilities.⁶⁶

Due diligence for the protection of individuals with disabilities against IPV requires a response to their individual circumstances. Generally, more attention needs to be paid to how these individuals can access support services, such as shelters, that are often poorly equipped

⁶² See Hassouneh-Phillips, D. and Curry, M.A., 2002. Abuse of women with disabilities: State of the science. *Rehabilitation Counseling Bulletin*, 45(2), pp.96-104; McCarthy, M., 2017. ‘What kind of abuse is him spitting in my food?’: reflections on the similarities between disability hate crime, so-called ‘mate’ crime and domestic violence against women with intellectual disabilities. *Disability & Society*, 32(4), pp.595-600, at 599.

⁶³ Breiding, M.J. and Armour, B.S., 2015. The association between disability and intimate partner violence in the United States. *Annals of epidemiology*, 25(6), pp.455-457.

⁶⁴ Howe, K., 1999. Violence against women with disabilities-An overview of the literature. *Women Against Violence: An Australian Feminist Journal*, (7), at 11.

⁶⁵ Womendez, C. and Schneiderman, K. 1991. Escaping from Abuse: Unique Issues for Women with Disabilities, *Sexuality and Disability*, Vol.9, No.3, pp.273-279.

⁶⁶ Barranti, C.C.R. & Yuen, F.K.O., 2008. Intimate Partner Violence and Women with Disabilities: Toward Bringing Visibility to an Unrecognized Population. *Journal of Social Work in Disability & Rehabilitation*, 7(2), pp.115-130, at 121.

for the victims of their children with disabilities.⁶⁷ In the following chapters due diligence interventions aimed at protecting individuals with disabilities facing IPV will be outlined.

2.5 Intimate partner violence and the right to housing

Scholars argue that intimate partner violence can be regarded as forced eviction for victims of partner abuse.⁶⁸ The UN Committee on Economic, Social and Cultural Rights has defined forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.⁶⁹ It is still debated whether a displacement originated from IPV can qualify as a forced eviction due to the fact that, in theory, the victim chooses to abandon the residence “voluntarily”, although this decision is often made because of the inexistence of another safe alternative. In other words, a part of the scholarship argues that victims have to make a choice between fleeing the residence or continuing their exposure to violence and increasing their risk for escalation.⁷⁰

IPV is strongly linked with the human right to housing present in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) formulated as:

The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The right to housing and some of its stemming aspects appears in other human rights instruments such as Article 17 of the ICCPR, Article 14(2) and 15(2) of the CEDAW and Article 9 and 28 of the CRPD.⁷¹ The link between IPV and housing has been recognized by the Office of the High Commissioner for Human Rights and it is represented mainly by the obstacles individuals face to leave an abusive relationship when they share a common

⁶⁷ id. at 123-125

⁶⁸ Combrinck, H., 2009. *Living in security, peace and dignity: The right to have access to housing of women who are victims of gender-based violence*. University of the Western Cape, Community Law Centre.

⁶⁹ United Nations, CESCR 1997. *General Comment 7: The right to adequate housing*, Forced Evictions UN Doc. E/C.12/1997/4, para. 3

⁷⁰ *Supra*, note 68, at 7

⁷¹ Habitat, U.N., 2009. *The right to adequate housing. Fact Sheet No. 21*. Office of the United Nations High Commissioner for Human Rights.

residence. Single women as well as women with children are especially vulnerable when they lack secure tenure:

If women do not enjoy security of tenure, they may not be able to leave an abusive relationship. They may have to make a choice between becoming homeless—often with their children—or facing physical and psychological violence at home. When shelters for battered women are not available, many women who leave their homes become vulnerable to homelessness and may suffer further violence as a result.⁷²

In regards to IPV, the right to housing manifests in two important aspects: (a) the need for victims to have access to shelters and a stable and adequate residence during the transition period of leaving an abusive relationship; and (b) the need for equality in inheritance laws, as women who are property owners report a reduced incidence of IPV.⁷³ In that sense, the right to housing could act in many cases as a protective factor against IPV, especially for women. At the same time, the lack of secure tenure could represent an important risk-factor. The Office of the United Nations High Commissioner for Human Rights addresses two of the most common misconceptions related to the right to housing. The right is not equivalent with the right to property, nor does not imply a State obligation to build housing for all individuals.⁷⁴ At the same time, it is not a long-term goal but an obligation to make “every possible effort, within their available resources, to realize the right to adequate housing”.⁷⁵ The situation of housing will also be further explored in the next chapters where I will illustrate that securing access to safe housing by means of specialised shelters constitutes an important element of due diligence in IPV.

2.6 Intimate partner violence and migrant workers

Finally, the right to live a life free of violence is also recognized in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), which affirms:

⁷² United Nations, 2012. *Women and the Right to adequate housing*, Human Rights. Office of the High Commissioner, HR/PUB/11/02 United Nations Publication, at 76.

⁷³ See Pradeep Panda 2003. *Rights-based strategies in the prevention of domestic violence*, Working Paper No. 344 (Centre for Development Studies), pp. 61–62.

⁷⁴ Habitat, U.N., 2009. *The right to adequate housing. Fact Sheet No, 21*, Office of the United Nations High Commissioner for Human Rights, at 6-8.

⁷⁵ *id.*

The right to life of migrant workers and members of their families shall be protected by law. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.⁷⁶

The specialized Committee mandated to interpret the above mentioned Convention stipulates in General Comment 2 that “migrant workers in an irregular situation, particularly women, are at increased risk of ill-treatment and other forms of violence at the hands of both private actors [...] which includes sexual violence, beatings, threats, psychological abuse, and denial of access to medical care”.⁷⁷ The Committee responds by encouraging States to act with due diligence and prevent, punish and provide reparations for the migrants victims of violence. The scope of this Convention is broad, as it applies to any “person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” with the personal limitations established in Article 3 (e.g. student and trainees).⁷⁸ Migrant workers, especially women, are in a particularly vulnerable situation and face multiple circumstances that might escalate their risk for victimization.⁷⁹

Attention must be paid by State authorities to all particularly vulnerable groups and migrant workers are one of the groups requiring special measures. Protection could be promoted, in this case, by the State of nationality through diplomatic channels that should provide migrant workers with relevant assistance; as well as the receptor State that has obligations to prevent violence in this vulnerable group.

⁷⁶ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 1990. A/RES/45/158, Articles 9 and 16.

⁷⁷ United Nations, 2013. *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families CMW/C/GC/2, para. 21.

⁷⁸ *Supra*, note 76, Articles 2 and 3

⁷⁹ Human Rights Watch, 2016. *I was sold: Abuse and Exploitation of Migrant Domestic Workers in Oman*, viewed March 2018, <https://www.hrw.org/report/2016/07/13/i-was-sold/abuse-and-exploitation-migrant-domestic-workers-oman> : “Female migrant domestic workers face multiple forms of discrimination and arbitrary government policies: as domestic workers, they are excluded from equal labor law protections guaranteed to other workers; as women, regulations provide that they can be paid less than male domestic workers; and as migrants, their salaries are based on their national origin rather than their skills and experience. These policies and practices violate Oman’s obligations under human rights treaties it has ratified, including the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination”.

Human rights obligations related to the protection of all individuals, without discrimination, against family violence and respectively IPV are evident in multiple international law sources. The international human rights system determines that men and women equally enjoy the right to life and the prohibition of ill treatment since childhood. When discussing IPV through a human rights lens, both institutions and the scholarship generally approach the discourse by focusing on the CEDAW. That is mostly due to the unfortunate realities surrounding prevalence, because women are more victimised, but also due to the paramount contribution of the CEDAW Committee in regards to the due diligence doctrine and the formulation of human rights obligations to protect women from IPV.⁸⁰ It is here where it is important to underline that although women have a much-needed strengthened protection against violence *via* CEDAW and all other human rights Conventions, men enjoy the same standards of human rights care *via* the ICCPR, CAT, CRC and CRPD. The protection of women under a specific instrument such as CEDAW was born out of the historical necessity of correcting inequality, much of which, as reiterated, still subsides and generates individual and community risk factors for IPV victimization such as poverty and economic dependence or low education levels, etc.

3. Violence against women and the United Nations human rights system

IPV is a human rights issue and this understanding has become dominant in the international human rights arena. This discourse is now accepted by national human rights bodies:

Domestic and family violence violates a wide range of human rights including: the right to life, the highest attainable standard of physical and mental health, the right to decent work, freedom of expression and the right to hold opinions without interference, the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.⁸¹

To recognize IPV as a human rights issue implies bypassing the innate public-private dichotomy of international law and acknowledging that even if States are the subjects on

⁸⁰ See Hasselbacher, L., 2009. State obligations regarding domestic violence: The European Court of Human Rights, due diligence, and international legal minimums of protection. *Nw. UJ Int'l Hum. Rts.*, 8, at190; Galić, N., 2011. States Positive Obligations to Protect Victims against Domestic Violence: Comparative Analysis of Austria, Hungary and Croatia's Take on the Due Diligence Standard.

⁸¹ Australian Human Rights Commission, n.d., viewed April 2016, <https://www.humanrights.gov.au/our-work/family-and-domestic-violence/why-domestic-violence-human-rights-issue>

international law, they are accountable and responsible for the acts of non-State actors if and when States fail to prevent human rights violations from occurring. But IPV is also a women's rights issue, affecting this category of the population often unequally and hindering the enjoyment of their human rights.

The first consolidated international effort is represented by the 1985 Nairobi World Conference when “violence against women truly emerged as a serious international concern” despite the entry into force of the CEDAW a few years earlier.⁸² That is because neither the Convention nor the Declaration on the Elimination of all forms of Discrimination against Women (DEDAW) make an explicit reference to violence against women. The efforts to include violence against women in the Convention were limited and mainly carried out by Belgium and Portugal and they were eventually unsubstantiated.⁸³ Nevertheless, in 1992 the CEDAW Committee did pay adequate attention to this gap in the CEDAW treaty and elaborated General Recommendation 19 that addresses gender-based violence. A year later the Declaration on the Elimination of Violence against Women was adopted and on that occasion the international community brought forward the “diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.⁸⁴ In 1994 a Special Rapporteur on violence against women was appointed by the Human Rights Commission with the mandate of recommending measures to prevent gender violence.⁸⁵ In 1995 the Fourth World Conference on Women took place in Beijing, and once again the international community took further steps by establishing a policy instrument, the Beijing Platform for Action to eliminate violence against women.

Another significant step was the adoption of the Optional Protocol to the CEDAW in 2000, a piece of legislation that grants individuals the right to litigate before the CEDAW Committee and demand responsibility for violations of the rights contained in the Convention.⁸⁶ With time, most UN agencies have adopted specific programs designated to combat gender inequality and violence at the intersection with other vulnerabilities. In that sense: “the United

⁸² United Nations, n.d. *Information Note*, Division for the Advancement of Women, The United Nations work on violence against women, viewed April 2016, <http://www.un.org/womenwatch/daw/news/unwvaw.html>

⁸³ Rehof, L.A., 1993. *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of all Forms of Discrimination against Women* (Vol. 29). Martinus Nijhoff Publishers.

⁸⁴ id.

⁸⁵ id.

⁸⁶ id.

Nations High Commissioner for Refugees, the United Nations High Commissioner for Human Rights, the World Health Organization, the United Nations Population Fund, the United Nations Children's Fund (UNICEF) and the United Nations Development Fund for Women (UNIFEM) now have specific policies and programmes with regard to gender-based violence".⁸⁷ Other relevant legislative and policy instruments include but are not limited to the United Nations General Assembly Resolutions 58/147, 61/143 and 63/155 and the UN Human Rights Committee General Comment No. 28.

It can be observed then, that the international human rights model does not address intimate partner violence explicitly but instead creates State obligations in relation to violence against women. For example, UNGA Resolution 58/147 speaks about the *elimination of domestic violence against women*, as does the CEDAW, the Human Rights Committee GC 28 and other regional instruments such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.⁸⁸ As the historical context of CEDAW's adoption is portrayed, the antecedents of the Convention were marked by designating 1975 the International Women's Year. The following year marks the genesis of the intention to draft a convention aimed at "providing equality for the sexes, condemn discrimination against women and modify cultural and social patterns" in order to ensure *de facto* and *de jure* equality between men and women.⁸⁹

As I move to examine the CEDAW as the main document containing enforceable human rights rules to combat IPV it is important to remember that the treaty's origin was linked to the historical roots of women's emancipation and their growing demands of political power to advance pressing women's issues.⁹⁰ For that reason, within the international human rights system, IPV is often associated with violence against women and most recommendations and action plans are targeting a hypothesis as men perpetuating and women being victims of IPV. Moreover, human rights models for combating violence against men can be extrapolated and based on analogies from violence against women strategies or can draw legality from the relevant human rights precepts that constitute the right to live a life free from violence. A number of academics have underlined that the CEDAW fails to accommodate

⁸⁷ *id.*

⁸⁸ United Nations Human Rights Committee, 2000. *CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, CCPR/C/21/Rev.1/Add.10, para. 11

⁸⁹ *Supra*, note 83, at 10

⁹⁰ *id.* at 6

intersectionality and does little for “women of different ethnicity, cultural or class identities”.⁹¹ Nevertheless, the UN system represents a strong macro-prevention scheme that takes into account the inter-dependence of societal risk factors for both gender inequality and violence.

Embracing all aspects of women’s lives—political, public, and diplomatic; economic, employment, and rural; educational; health; marriage and family; and protection against violence, including domestic violence—CEDAW has imposed an obligation on states parties to ensure substantive equality for women.⁹²

The CEDAW goes beyond a generic mandate of equality between the sexes and demands that States address the root causes of inequality. Although the Convention does not expressly mention domestic violence or IPV, it enunciates valuable standards. If properly enforced, the rights and epitomes contained not only in the Convention but the DEVAW and other adjacent instruments, have the potential of combating intimate partner abuse, especially for those who suffer from it the most: women. In spite of the plethora of international instruments dealing with VAW and implicitly applicable to IPV, the ineffectiveness of these instruments to make a visible impact on the global prevalence of IPV is often voiced. The critiques are numerous and have the same nature as the ones referring to the effectiveness and enforceability of general international law. Among the critiques, an important feminist criticism challenges the gendered nature of understanding the realities of the human rights legal construct. In *Violence Against Women Under International Human Rights Law*, Edwards addresses numerous themes related to the male-centric construct of the international human rights system. The theme of liberal/equality feminism is used to explain that even when the human rights system progressively includes women in the decision-making and legislating processes, women are “operating within a particular socio-political-historical context, not least limited by a liberal feminist agenda of formal equality”.⁹³ Edwards underlines that it is important to cast-off the idea that men cannot represent or comprehend women’s interests although the reality is that they “or the most part, have not done so [or been encouraged or socialized to do so]”.⁹⁴

⁹¹ Raday, F., 2012. Gender and democratic citizenship: the impact of CEDAW. *International journal of Constitutional Law*, 10(2), pp.512-530.

⁹² *id.*

⁹³ *Supra*, note 10, at 45

⁹⁴ *id.* at 47; See Marshall, J., 2008. Law and politics at the perimeter: Re - evaluating key debates in feminist theory by Vanessa E. Munro. *Journal of Law and Society*, 35(4), pp.579-582.

Another relevant feminist critique argues that the idea of human rights does not internalise women's experiences: "many of the reservations to the CEDAW are to the central provisions relating to non-discrimination [...] obligations to which many states parties are already bound by virtue of their ratification of other human rights treaties, or under customary international law".⁹⁵

A further critique puts forward the idea that the human rights system prioritizes civil and political rights over social, economic and cultural rights that are subjected to a progressive rather than immediate realization, leaving room for women being disadvantaged and creating insufficient or potentially inadequate responses to VAW:⁹⁶

For the purposes of individual litigation, it is a far more difficult proposition to trace the cause of violence against women to economic inequality, rather than asserting that the violence caused physical, sexual, or psychological harm to the woman (what would typically fall within the civil rights field).⁹⁷

The human rights system offers protection against IPV by recognizing the right to life and freedom from torture for all individuals. This protection bears a civil-political nature. CEDAW's precepts are important because in IPV they can be viewed as complementary; seeing how the precepts focus on social-economic rights and address deeply rooted inequality. Societal risk factors associated with IPV (such as low social and economic status of women; weak legal sanctions against IPV within marriage; *see* Chapter II) can be lowered by States fulfilling the provisions of CEDAW. At the same time, other risk factors (such as exposure to violence between parents; sexual abuse during childhood or exposure to other forms of prior abuse, etc.) require that States fulfil certain civil and political rights. The role of the CEDAW in preventing IPV is thus essential but not exclusive. Preventing IPV requires a holistic human rights approach based on the indivisibility of rights.

⁹⁵ *Supra*, note 10, at 50

⁹⁶ *International Covenant on Economic, Social and Cultural Rights*, 1966. United Nations Treaty Series, vol. 993, at 3, *see* Article 2(1) of the ICESCR: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".

⁹⁷ *Supra*, note 10, at 61

3.1 CEDAW: The Convention and Committee's roles in preventing IPV

Although the text of the Convention does not mention IPV, violence against women nor domestic violence, the Committee's General Recommendations No. 19 and 12 are fundamental for preventing IPV because of their explicit mention of violence against women. The rights enunciated by the Convention, interact with three categories of risk factors for IPV and constitute binding obligations for signatory States. First, I will briefly introduce IPV-relevant CEDAW provisions, followed by an examination of the General Recommendations and finally, determine the content of States' obligations deriving from the Convention. Along the lines of this section, I will demonstrate that although the Convention does not *explicitly* contain a violence provision, it legally binds States to prevent and eradicate IPV through an obligation to ensure gender equality.

The Convention contains 16 substantive Articles that put forward the rights of women. Such rights are a combination of civil, political, cultural and economic rights, all tailored to achieve gender equality and ensure the full realization of women's rights. Article 1 starts by defining discrimination while Article 2 enumerates mandatory policy measures to combat it. Article 3 demands that States take "all appropriate measures to ensure [...] the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men". Article 4 obligates States to put forward affirmative action programs in order to ensure that women enjoy substantive (*de facto*) equality while Article 5 demands that States "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". In its remaining articles, the Convention continues by addressing prostitution, the political and public life of women, nationality, education, employment, health, rural women and family life.

As explained in Chapter II, low education and low levels of income are individual risk factors that put both men and women at risk for becoming IPV victims. Moreover, a low social and economic status for women and/or a lack of civil and political rights constitute societal risk factors for IPV victimization. Gender stereotyping as a cultural pattern consisting of "traditional attitudes by which women are regarded as subordinate to men or as having

stereotyped roles” also influence the perpetration of IPV through “widespread practices involving violence or coercion, such as family violence and abuse, [...]”.⁹⁸

Gender stereotyping can be embedded both in our individual consciousness and in our surrounding environments. The international obligation to combat “social and cultural patterns” is paramount in reducing IPV victimization and “the need to eliminate stigma, prejudice and stereotyping does not end, however, with criminalization”.⁹⁹ Because gender stereotyping is perhaps the most vast, socially entrenched and rather invisible factor related to IPV, deriving State obligations are multiple forming interconnected dimensions of equality.¹⁰⁰

Gender stereotypes come in varied and overlapping forms, including “sex stereotypes,” “sexual stereotypes,” “sex-role stereotypes” and “compounded stereotypes.” Understanding the different forms is important as it can assist in identifying and grasping the parameters of a particular stereotype and, as a result, the steps that a State Party might usefully take to address that stereotype.¹⁰¹

As put forward by the Office of the United Nations High Commissioner for Human Rights, State efforts must thus target the eradication of notions that “women are weak and passive and men are aggressive and competitive, men have strong libidos and women are sexually passive”¹⁰² by using education as a combating channel but also modifying media and advertising legislation and “encourage the sensitization of journalists and other media personnel regarding violence against women”.¹⁰³ Gender stereotypes are subtle, such as stigmatizing women for breastfeeding in public or men for appearing emotional. At times, stereotypes are obvious, such as the clarity of expecting women to be caregivers and men to be decision makers. In cultures where gender stereotypes dictate that women rarely own

⁹⁸ Committee on the Elimination of Discrimination Against Women (CEDAW), 1992. *General Recommendation No. 19: Violence against women*, para.11

⁹⁹ Fredman, S. and Goldblatt, B., 2015. *Gender equality and human rights*. UN.

¹⁰⁰ *id.* at 25

¹⁰¹ United Nations, 2013. *Gender stereotyping as a human rights violation*, OHCHR Commissioned Report, , viewed April 2016, <http://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>

¹⁰² *id.*

¹⁰³ United Nations Department of Economic and Social Affairs Division for the Advancement of Women, 2010. *Handbook for legislation on Violence against Women*, at 30, viewed November 2016, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

property and divorce laws are strict, IPV has found its idyllic perpetration spot, as these stereotypes can become obstacles for the victim to end the abuse. The rights contemplated by CEDAW are thus inter-connected and all-relevant to ensure the fulfilment of substantive equality that can counteract risk factors for IPV.

Another important way in which CEDAW can impact IPV is through Article 16 that mandates States to “eliminate discrimination against women in all matters relating to marriage and family relations”. This norm also demands that States ensure “the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property [...]”.

It was mentioned in Chapter II that economic abuse is one of the manifestations of IPV. The family rights discussed above are applicable to *de facto* partnerships as well and linked to the socio-economic realities of our societies. If men are regarded as the head of the families and the professional bread-winning pillars, their control over finances and property might be unequally exercised which can result in them economically depriving and abusing their partners. To prevent that, States must both combat stereotypes (CEDAW, Article 5) and enforce the international obligation of family equality (Article 16). In the sphere of economic abuse, this means fulfilling the rights contained in Article 11 of the CEDAW that obligates States to guarantee “equal remuneration, equal employment opportunities, social security [...]”. Thus, different rights might be protective against different dimensions of IPV and it is evident how rights are interconnected in a way that only a uniform and holistic approach can combat IPV on multiple fronts.

The legal force of General Comments and Recommendations of human rights bodies, often relevant for IPV and brought into discussion in this thesis, is still disputed. The International Law Association remarks that “comments, and general comments and recommendations of the treaty bodies are to be accorded considerable importance as the pronouncement of body expert in the issues covered by the treaty; they are not in themselves formally binding interpretations of the treaty”.¹⁰⁴ Nevertheless, this perception over the legal force of General Comments or Recommendations represents a minority, and perhaps a traditional view of

¹⁰⁴ International Law Association, 2004. *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, Committee on International Human Rights Law and Practice, para 16.

international law generally. The majority of the human rights academics and practitioners seems to accept human rights bodies as authorities mandated with an interpretative power over the Conventions.

In the case of CEDAW “partly because it is a product of its time, some key terms are not defined and some issues that are critical of women’s full enjoyment of their human rights are not mentioned”.¹⁰⁵ The work of the CEDAW Committee corrects this historical and circumstantial error as it is a body working to implement and monitor the Convention and to interpret it in accordance with the rules of interpretation set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT).¹⁰⁶ Although the Committee itself has been “divided on whether Article 21 did in fact authorize it to adopt General Recommendations” in 1986 after seeking advice from the Legal Counsel of the UN, it was decided by members that this authority is in fact in accordance with the Convention.¹⁰⁷ Although under public international law, these Comments or Recommendations might not be legally binding instruments in the same way treaties are, the ICJ confirms their weight and importance and it has been signaled that States’ responses to these documents generate the subsequent State practice that Article 31.3.b of VLCT refers to.¹⁰⁸

The fact that CEDAW makes no explicit mention of IPV should not be discouraging nor used to justify a slow response in eradicating the phenomenon or applying the Convention. The CEDAW Committee’s General Recommendations 12 and 19 are explicitly demanding and purport the connection between articles of the Convention and IPV. These Recommendations provide dynamic and progressive interpretations to suit women enjoying their human rights in ever-changing cultural, historical and social settings. These settings innately evolve and generate new opportunities but also new obstacles for women. It is in that context that these General Comments or Recommendations operate, to elucidate and clarify how, for example, IPV is generated and reinforced by inequality, in a particular time and place. CEDAW’s General Recommendation 19 states:

¹⁰⁵ Freeman, M.A., Rudolf, B., Chinkin, C., Kroworsch, S. and Sherrier, A. eds., 2012. *The UN convention on the elimination of all forms of discrimination against women: A commentary*. Oxford University Press.

¹⁰⁶ *id.* at 13-14. See *Vienna Convention on the Law of Treaties*, 1969. United Nations Treaty Series, vol. 1155, at 331, Articles 31 and 32.

¹⁰⁷ *id.* at 21

¹⁰⁸ *id.* at 24; See *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of Congo)*, ICJ Judgement of 30 November 2010, para. 66.

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include: (a) The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favourable conditions of work.¹⁰⁹

The same General Recommendation underlines, as early as 1992, the connection between stereotypes, unemployment, poverty, conflict, pornography, economic dependence and violence against women. Once more this shows that eradicating IPV requires a holistic strategy that should aim at eliminating multiple societal risk factors.¹¹⁰ At the same time, General Recommendation 12 states: “Articles 2, 5, 11, 12 and 16 of the Convention require [...] to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life”.¹¹¹

General Recommendation 12 purports a link between articles referring to discrimination, gender stereotypes, the right to health, the right to employment and equality within family life and violence against women. As it has been underlined throughout this chapter, IPV and generally violence against women are regarded by the international human rights system as discrimination, torture or a breach of another corresponding right that can fluctuate (right to life, right to family life or a cross-cutting breach involving several rights, including economic, cultural and social rights).¹¹² The Committee’s General Recommendations 12 and 19 bring forward a link that is now accepted by the scholarship, human rights lawyers and domestic violence practitioners as common knowledge: IPV is a phenomenon that breaches the CEDAW under its prohibition of discrimination and depending on the case in question under a variety of other articles proclaiming economic, social and cultural rights for women. As the

¹⁰⁹ *Supra*, note 98, paras. 6-7

¹¹⁰ *id.* paras. 12-23

¹¹¹ United Nations, 1989. *General Recommendation No. 12: Violence against Women*. Committee on the Elimination of Discrimination Against Women (CEDAW).

¹¹² Columbia Law School Human Rights Clinic, 2010. *Human rights and Domestic Violence, An Advocacy Manual*, 14th Annual Domestic Violence Conference at Fordham University, at 16.

Convention is a dynamic instrument that is expected to reflect current realities, the CEDAW Committee modernised and restructured its interpretations related to VAW in the new General Recommendation 35 of 2017 and incorporated a due diligence obligation to prevent IPV.

3.2 Complementary international instruments applicable to intimate partner violence

Knowledge related to IPV as a human rights issue, to the obstacles States face in implementing certain norms as well as active guidance on human rights compliance can also be derived from additional sources. These sources range from regional human rights bodies and treaties to international institutions and organisations that work for the protection of women or prevention of societal violence.

In 1993 the Vienna World Conference on Human Rights took place and was regarded as a great success, in part, due to a “massive interest of human rights and women’s organizations in the Conference”.¹¹³ The Conference and the subsequent Declaration and Programme of Action were generally viewed as outstanding proceedings not only in regards to women’s rights but also because they marked the pronouncement of the indivisibility, interconnectedness and interdependence of all human rights.

The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis [...]. It is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.¹¹⁴

In Vienna, a notable number of women’s rights organizations representatives were present, and the climate of progress was still unstable due to “opposition in the conference halls, through numerous calls for women’s return to the family and domesticity”.¹¹⁵ A petition to the UN Secretary General signed by 65,000 people demanded that the Conference make

¹¹³ Flinterman, C. 2013. Vienna Declaration and Programme of action: 20 years later. *Netherlands Quarterly Of Human Rights*, 31(2), 129.

¹¹⁴ United Nations, 1993. *Vienna Declaration and Programme of Action*, World Conference on Human Rights, A/CONF.157/23.

¹¹⁵ Benedek, W., Kisaakye, E.M. and Oberleitner, G., 2002. Human Rights of Women: International Instruments and African Experiences, at 46.

women's rights a priority, discussing the topic at all stages.¹¹⁶ The World Conference was eventually a success for the recognition of women's rights and worked as a catalyst for the subsequent drafting of the DEVAW:

The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. [...] All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

The Vienna Declaration mentions violence against women and insists on the significance of working for the eradication of all forms of violence against women.¹¹⁷ The Conference also represented an inception momentum for the discussion and future development of the Optional Protocol to the CEDAW and the institution of the Special Rapporteur for Violence against Women.¹¹⁸ Of great importance is also the Declaration on the Elimination of Violence against Women (DEVAW); a complementary policy instrument adopted by the UN General Assembly in 1993 via RES/48/104. The same year, a Special Rapporteur for Violence against Women was appointed.¹¹⁹ Among other policy instruments that will also be mentioned throughout this chapter, the Declaration provides “detailed guidance on the steps to be taken by States and other stakeholders to strengthen the legal framework for addressing all forms of violence against women”.¹²⁰ Although generally regarded as an unbinding document, the Declaration has the power conferred to it by the validity of the document it was integrated into: a resolution of the General Assembly.¹²¹ However, “all General Assembly resolutions to which the ICJ has arguably attributed an impact on general international customary law are in fact, in their relevant provisions, declarations”.¹²² Most declarations, however, portray the *opinio iuris* on a matter and given the fact that the DEVAW was adopted without vote makes

¹¹⁶ *id.*

¹¹⁷ *Supra*, note 114

¹¹⁸ *id.*

¹¹⁹ *Supra*, note 10, Edwards, A. 2011.

¹²⁰ *Supra*, note 103, Handbook for Violence against Women.

¹²¹ Öberg, M.D., 2005. The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ. *European Journal of International Law*, 16(5), pp.879-906. at 895: “[Declarations] were not foreseen by the Charter [of the United Nations] and have no effect based on it. They either interpret the Charter or reflect the state of international law, in which case they have no effect of their own; or they add provisions of *lex ferenda*, in which case they have no Charter authority to influence general international law”.

¹²² *id.* at 903

it difficult to elevate its stand as to an authoritative document equivalent to a treaty. Regardless, the Declaration remains one of the most influential regulatory documents on the topic of VAW. The Declaration is composed of 6 Articles. Article 1 defines violence against women broadly:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.¹²³

Article 2 enumerates the different manifestations of gender violence, including physical, sexual and psychological violence while Article 3 brings forward a list of the most important human rights that are at stake in the context of violence against women (right to life, right to equality, right to liberty and security of person, equal protection under the law, freedom from discrimination, right to the highest standard attainable of physical and mental health, right to just and favorable conditions of work, right not to be subjected to torture, or other inhuman or degrading treatment or punishment).¹²⁴ Article 4 presents a series of mandates and strategies concerning both legislation and broader initiatives to eradicate VAW, among which is the due diligence obligation:

[States should] exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.¹²⁵

The due diligence clause is included in the Declaration 5 years after the *Velasquez Rodriguez* case was decided by the Inter-American Court of Human Rights, the institution who first articulated the necessity of expanding State accountability towards the acts of non-private actors.¹²⁶ The due diligence obligation is a central theme of this thesis and will be thoroughly examined in the following chapters. Finally, Articles 5 and 6 of the DEVAW establish

¹²³ *Declaration on the Elimination of Violence against Women*, 1993. United Nations General Assembly, A/RES/48/104.

¹²⁴ *id.* Article 3

¹²⁵ *id.* Article 4C

¹²⁶ *Velasquez Rodriguez v. Honduras*. Inter-Am.Ct.H.R Judgment of July 29, 1988,. (Ser. C) No. 4.

coordinated international efforts to tackle VAW within the United Nation system and declare the supremacy of national provisions if and when those are more conducive to eliminating VAW. The Declaration is one of the most important complementary documents to the CEDAW. It represents a legal instrument that defines violence against women, shows a clear link between individual human rights and IPV and embodies and consolidates existing State practice.

Another institution of significant importance for intimate partner violence is that of the Special Rapporteur for Violence against Women (SRVAW) which originated by means of Resolution 1994/45 of the UN Commission for Human Rights. The position was initially set up as temporary, to be held for three years. Nevertheless, the institution remains in place and the incumbent still carries out activities nowadays. Since 1994, the SRVAW has received complaints, compiled annual reports, has been on more than 32 country missions and held regional consultations with stakeholders and, more importantly, has dynamically participated in conceptualizing VAW and IPV.¹²⁷ The work of the SRVAW has touched upon IPV urging States to prevent violence against women by addressing its root causes and putting forward that the “scope of State obligation breaks the private/public dichotomy by addressing the linkages of illegal private conduct with public policy and State structures”.¹²⁸

Special Rapporteur Ertürk has been particularly interested in developing the due diligence discourse and “has ruptured the public/private dichotomy by expanding State accountability beyond private actors for private acts of violence, by calling upon the State to address external pressures that bear upon particular groups because of their status, ethnicity or context, and that exacerbate domestic violence”.¹²⁹

An additional legal document relevant for IPV is the Beijing Declaration and Platform for Action (BDPA) adopted in 1995 as a result of the Fourth World Conference on Women. The Declaration and Platform for action are not legally binding but establish strategic goals in multiple areas of concern such as women and poverty, women and the media, women and the environment and among other strategies on violence against women. The BDPA puts forward:

¹²⁷ United Nations n.d. *A critical Review*, Special Rapporteur on Violence against Women, Its Causes and Consequences, 15 years, at 2-7.

¹²⁸ id. at 10

¹²⁹ id. at 12

Developing a holistic and multidisciplinary approach to the challenging task of promoting families, communities and States that are free of violence against women is necessary and achievable. Equality, partnership between women and men and respect for human dignity must permeate all stages of the socialization process.¹³⁰

Strategic objective D.1. of the BDPA concerns VAW and establishes actions to be taken by Governments, employers, trade unions, community and youth organizations and non-governmental organizations, international organizations, regional organizations and the UN itself. The BDPA thus identifies relevant stakeholders and demands a collaborative approach in a strategic document rather than one containing substantive rights. Some have criticised the BDPA for mainstreaming one perspective of equality that “cannot be forced upon all the cultures and communities of the world”.¹³¹

In 2006 the UN General Assembly adopted without vote resolution 61/143 on the topic of the intensification of efforts to eliminate all forms of violence against women. This resolution has the same legal status as the above mentioned documents- the DEVAW and BDPA- and recognizes that despite their existence “obstacles remain in the implementation of international standards and norms to address the inequality between men and women and violence against women in particular”.¹³² Among other matters, the resolution urges States to “exercise due diligence to prevent all acts of violence against women [and] end impunity for violence against women, by prosecuting and punishing all perpetrators, by ensuring that women have equal protection of the law and equal access to justice and by holding up to public scrutiny and eliminating those attitudes that foster, justify or tolerate violence”.¹³³

In 2009 and on the same topic, the General Assembly adopted resolution 64/137 that stresses that more resources should be allocated towards combating VAW within the United Nations and requests that States “significantly increase their voluntary contributions [...] to meet the annual target of 100 million\$ by 2015 as set by the Secretary General’s campaign *UNiTE to*

¹³⁰ Women, U. N. 1995. *Beijing Declaration and Platform for Action*. In Fourth World Conference on Women, para 119.

¹³¹ Kausar, Z. 2000. Gender Perspective in UN Document on Fourth World Conference on Women in Beijing: An Analysis of Platform for Action. *Hamdard Islamicus*, 23(2), pp.85-98, at 97.

¹³² United Nations 2006. *Resolution on the Intensification of efforts to eliminate all forms of violence against women*, General Assembly RES 61/143, para.6

¹³³ *id.* para. 8(h)(i)

End Violence against Women".¹³⁴ In 2010, the UN Human Rights Council adopted resolution 14/12 on the topic of strengthening efforts to eliminate all forms of violence against women and ensuring due diligence in prevention. The resolution stresses the importance of tackling gender inequality to prevent VAW and calls upon States to "exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms".¹³⁵

After the adoption of the DEVAW, all UN resolutions on this topic stress the importance of the due diligence strategical approach to prevent violence by consolidating policy measures to empower women financially and institutionally and implement policies that prevent violence from reoccurring.¹³⁶ In other words, these resolution call for the strengthened protection of economic, social and cultural rights and build up a discourse linking social and economic conditions to the perpetration of IPV and other forms of VAW.

Undoubtedly, another important precept related to the protection of all individuals against IPV is represented by Article 2 of the ICCPR and its gender dimension reflected in Article 3 of the same Convention: "States Parties [...] undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant". These precepts reflect a prohibition of discrimination on any grounds and a right to gender equality, in its formal and substantive dimensions, and are common to all Conventions discussed throughout the thesis.

Recently, an additional international document related to IPV has been adopted: the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence.¹³⁷ The Istanbul Convention is part of the Council of Europe legal apparatus and as of April 2018, 29 States have ratified it.¹³⁸ The Convention represented a great step in the codification of women's rights, especially in regards to different forms of violence such as IPV. The ratification of this instrument is not, however, mandatory for Council of Europe

¹³⁴ United Nations 2009. *Intensification of efforts to eliminate all forms of violence against women*, General Assembly A/RES/64/137.

¹³⁵ United Nations 2010. *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, Resolution adopted by the Human Rights Council, A/HRC/RES/14/12.

¹³⁶ *id.* at 3-6

¹³⁷ *Convention on preventing and combating violence against women and domestic violence*, 2011. Council of Europe.

¹³⁸ Subject to change, *Ratification Status*, viewed April 2018, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>

member States and it cannot be enforced *via* the European Court of Human Rights. The Convention's compliance mechanism consists of a simple Report process run by GREVIO (Group of experts on action against violence against women and domestic violence).¹³⁹ Article 5 of the Convention is particularly important and mentions due diligence:

Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

The multiple acts of violence covered by the Convention are those pertaining to the categories of domestic violence, violence against women and gender based violence and the instrument defines all of them in Article 3.¹⁴⁰ Moreover, the Istanbul Convention contains a third chapter dedicated to the prevention of violence in its multiple forms and imposes State obligations related to gender stereotypes, awareness-raising, education, training of professionals, preventive intervention programmes, etc. Article 16 regulates preventive intervention represents an innovative approach by recognising the cycle of violence and demanding States to employ early interventions:

Parties shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non - violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns. Parties shall take the necessary legislative or other measures to set up or support

¹³⁹ *Supra*, note 137. *Convention on preventing and combating violence against women and domestic violence: Monitoring mechanism*: Chapter IX.

¹⁴⁰ *id.* Article 3: “*Violence against women is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Domestic violence shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. Gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately*”.

treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.

Together with the treaties examined in earlier sections of this chapter, the regional instruments and soft law instruments presented here constitute a strong background for the mandatory nature of the due diligence obligations to prevent IPV. This chapter has identified the main sources of international obligations applicable to IPV and has stressed the importance of broadening the scope of human rights relevant for preventing IPV. Depending on the particular context of the victim and perpetrator, the severity, intent and context of the abuse and the harms it generates, IPV can constitute ill-treatment, breaches of the right to life or discrimination. Unfulfilled social, economic or cultural rights like the right to housing or education can have severe impacts on the potential of a victim to escape abuse. All relevant human rights will be discussed again in the context of due diligence, in the following chapters.

Insofar, the main focus of the thesis and the previous and present chapter has been IPV perpetrated between adults. However, IPV can start in adolescence and can consequently be an issue of children's rights. The following chapter will be dedicated to discussing IPV in the context of the CRC and the rights of children. Due diligence obligations to prevent IPV are also derived from the Convention on the Rights of the Child. The identification of relevant human rights norms will thus continue with the examination of IPV in the context of teen dating violence and the exposure of children to parental IPV.

Chapter IV: The exposure of children to IPV, teen dating violence and human rights

1. Introduction
2. The exposure of children to parental violence: human rights implications
3. State obligations to prevent teen dating violence

1. Introduction

So far, IPV has been presented as a concept primarily associated with abusive manifestations occurring in adult relationships. This understanding is also prevalent in the scholarship. Generally, when children are recognized as part of the phenomenon, they are often referred to as witnesses to their parent's violence. However, children are exposed to IPV through multiple focal points, as potential perpetrators, victims or witnesses. The human rights of children can be breached through a failure to provide them with safe social and family spaces critically necessary for their appropriate development. This chapter expands the traditional vision of who is affected by IPV and identifies State obligations related to the protection of children against teen dating violence (TDV) and parental IPV.

In the international human rights system, the definition of a child is found in the Convention on the Rights of the Child (CRC): "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".¹ It is now generally accepted that children directly witness or become aware of parental IPV;² and that exposure to IPV can produce long-lasting negative impacts on child development.³ As mentioned in Chapter II, young age represents a risk factor for IPV perpetration and victimization.⁴ Children as young as 15 can be direct victims of IPV;⁵ and adolescent violence often referred

¹ *Convention on the Rights of the Child*, 1989. United Nations, Treaty Series, vol. 1577, at 3.

² MacMillan, H.L. and Wathen, C.N., 2014. Children's exposure to intimate partner violence. *Child and Adolescent Psychiatric Clinics*, 23(2), pp.295-308.

³ Evans, S.E., Davies, C. and DiLillo, D., 2008. Exposure to domestic violence: A meta-analysis of child and adolescent outcomes. *Aggression and violent behavior*, 13(2), pp.131-140; Kitzmann, K.M., Gaylord, N.K., Holt, A.R. and Kenny, E.D., 2003. Child witnesses to domestic violence: a meta-analytic review. *Journal of consulting and clinical psychology*, 71(2), at 339.

⁴ Krug, E.G., Mercy, J.A., Dahlberg, L.L. and Zwi, A.B. 2002. The world report on violence and health. *The Lancet*, 360(9339), pp.1083-1088.

⁵ World Health Organization, 2013. *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*: Executive Summary. In Global and

to as teen dating violence (*abr.* TDV) encompasses similar abusive manifestations to adult IPV.⁶ Despite these findings, children are often regarded as bystanders to parental IPV, suffering the collateral consequences of being trapped in their individual or family abuse;⁷ instead of being recognized as human rights holders and *de jure* victims, by the law and their communities. The scholarship dealing with the intersection between IPV and international human rights law is extensively dedicated to examining due diligence State obligations to prevent violence against women and with the nature of IPV as a human rights violation.⁸ Countries with a good human rights record such as Finland, recognize that little attention has been given to TDV:

“Youth dating violence” (or dating violence) is not a clearly visible topic in Finland. Lately the big focus has been on violence and sexual violence towards women.⁹

Little is known about the human rights implications of IPV for children and the normative content of State obligations to prevent IPV affecting children and youth. This chapter represents an innovative attempt to frame IPV as a violation of the rights of the child. It briefly identifies multiple ways in which children’s rights are affected in cases of IPV by examining the Convention on the Rights of the Child (CRC) as well as other international instruments. This is done to determine the existence and the basic normative content of States’ obligations to prevent IPV for children. Finally, the chapter discusses how the rights of children and the rights of parents, as well as preventative approaches, need to be balanced and integrated into promoting a full and rounded protection of the family against IPV.

Children participate in IPV either as direct victims and perpetrators (TDV) or indirectly, as witnesses to parental relational conflict. As discussed extensively above, IPV is a concept with multiple variable definitions. This chapter follows the inclusive definition promoted by

regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence: full report; *see* at 6.

⁶ Mulford, C.F. and Blachman-Demner, D.R., 2013. Teen dating violence: Building a research program through collaborative insights. *Violence Against Women*, 19(6), pp.756-770.

⁷ Clarke, A. & Wydall, S., 2015. From ‘Rights to Action’: practitioners’ perceptions of the needs of children experiencing domestic violence. *Child & Family Social Work*, 20(2), pp.181–190.

⁸ E.g. McQuigg, R.J., 2011. *International human rights law and domestic violence: the effectiveness of international human rights law*. Routledge; Meyersfeld, B., 2010. *Domestic violence and international law*. Bloomsbury Publishing.

⁹ Reform 2016. *Dating Violence among Nordic Youth Report and Recommendations*, 2016 Nordic Expert Conference on Violence in Adolescents’ Intimate Relationships, viewed February 2018, <https://reform.no/wp-content/uploads/2017/04/2016.11.28-Recommendations-from-Dating-Violence-Nordic-Youth-expert-conference.pdf>

the European Institute for Gender Equality: “a pattern of assaultive and coercive behaviours, including physical, sexual and psychological acts, as well as economic coercion, which adults or adolescents may use against their intimate partners without their consent”.¹⁰

On one hand, children can directly witness or be aware of family climates consistent with multiple abusive parental behaviours. On the other hand, teen dating violence (TDV) has slowly consolidated as an independent term; and refers to IPV perpetrated between adolescents involved in romantic relationships. TDV has certain particularities such as an increased use of technologies as a mean for abuse;¹¹ and significantly reduced coping strategies for the positive negotiation of power in conflicts.¹² However, international research reflecting the prevalence and risk factors associated with TDV as well as successful interventions targeting child victims and perpetrators is scarce. Concerning children exposed to parental IPV, the literature observes an infringement of their human rights derived from being forced to assume adult responsibilities, feelings of isolation and the lack of a secure environment.¹³ In aggravated cases of parental IPV, children face extreme welfare risks including the loss of a parent or risks to their own lives;¹⁴ as well as negative emotional, social or academic impacts.¹⁵ Exposure to parental IPV has been referred to as “a prevalent form of child maltreatment [...] associated with significant, deleterious health outcomes”.¹⁶ On the other hand, children experiencing TDV also face multiple negative consequences related to mental and sexual health, such as depression, anxiety, poor academic performance, unintended pregnancies;¹⁷ as well the risk of continuity of IPV into adulthood.¹⁸

¹⁰ EIGE, 2018. *Intimate Partner Violence*, viewed January 2018, <http://eige.europa.eu/rdc/thesaurus/terms/1265>

¹¹ Violence, D. 2015. *The dynamics and consequences of teen dating violence*. National Judicial Education Program, Legal Momentum, viewed January 2018, <https://www.legalmomentum.org/sites/default/files/reports/Dynamics%20Fact%20Sheet%20Final.pdf>

¹² Wekerle, C. and Wolfe, D.A., 1999. Dating violence in mid-adolescence: Theory, significance, and emerging prevention initiatives. *Clinical psychology review*, 19(4), pp.435-456.

¹³ Clarke, A. & Wydall, S., 2015. From ‘Rights to Action’: practitioners’ perceptions of the needs of children experiencing domestic violence. *Child & Family Social Work*, 20(2), pp.181–190.

¹⁴ Jaffe, P.G., Campbell, M., Hamilton, L.H. and Juodis, M., 2012. Children in danger of domestic homicide. *Child Abuse and Neglect-the International Journal*, 36(1), at 71.

¹⁵ Kitzmann, K.M., Gaylord, N.K., Holt, A.R. and Kenny, E.D., 2003. Child witnesses to domestic violence: a meta-analytic review. *Journal of consulting and clinical psychology*, 71(2), at 339.

¹⁶ McTavish, J.R., MacGregor, J.C., Wathen, C.N. and MacMillan, H.L., 2016. Children’s exposure to intimate partner violence: an overview. *International review of psychiatry*, 28(5), pp.504-518.

¹⁷ Ackard, D.M., Eisenberg, M.E. and Neumark-Sztainer, D., 2007. Long-term impact of adolescent dating violence on the behavioral and psychological health of male and female youth. *The Journal of pediatrics*, 151(5), pp.476-481; Silverman, J.G., Raj, A., Mucci, L.A. and Hathaway, J.E., 2001. Dating violence against adolescent girls and associated substance use, unhealthy weight control, sexual risk behavior, pregnancy, and suicidality. *Jama*, 286(5), pp.572-579.

IPV is slowly being recognized as a human rights issue and the existence of State obligations to prevent IPV is unequivocal; though still tightly connected to the narrative of gender-based violence.¹⁹ Expanding this narrative to include other intersectional aspects is necessary and TDV should be regarded as a derivative of IPV and consequently be exposed as a violation of human rights. To determine the existence of States obligations to prevent TVD and minimize the impact of adult IPV on children, a thorough examination of relevant international human rights norms is necessary.

2. The exposure of children to parental violence: human rights implications

2.1 The right to freedom from all forms of violence

The first relevant norm related to children's exposure to parental IPV is Article 19 of the Convention on the Rights of the Child (CRC) that mandates States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".²⁰ The same article includes an open list of protective and preventive measures that should be adopted such as "forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement".²¹ This norm iterates a right to be free from violence applicable to all children.

The obligation contained in Article 19 is, in fact, a due diligence obligation that requires early State interventions to protect children from exposure to multiple forms of violence.²² Exposure to parental IPV has been expressly mentioned by the Committee on the Rights of

¹⁸ Cutter-Wilson, E. and Richmond, T., 2011. Understanding teen dating violence: practical screening and intervention strategies for pediatric and adolescent healthcare providers. *Current opinion in pediatrics*, 23(4), at 379.

¹⁹ United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), 2017. *General Recommendation No. 35 on gender-based violence against women*, para. 9-19

²⁰ *Convention on the Rights of the Child*, 1989. United Nations, Treaty Series, vol. 1577, Article 19.

²¹ *id.*

²² United Nations Committee on the Rights of the Child (CRC), 2011. *General Comment No. 13, The right of the child to freedom from all forms of violence*, CRC/C/GC/13, para 5.

the Child as a form of mental violence.²³ The same Committee demanded that in fulfilling the right contained in Article 19, States undergo a paradigm shift and regard children as right holders instead of ‘objects in need of assistance’ or ‘beneficiaries of benevolent activities of adults’.²⁴ Understanding the realities of IPV is paramount to maximizing protection for all individuals involved. IPV is generally an occurrence that implies a certain variable time elapse between the manifestation of violence and the moment State officials have knowledge of an abusive situation that might bear dangerous effects on children. The duty of States, is thus two-fold; to guarantee that IPV does not originate around children on one hand, and to immediately guarantee the safety of children once authorities have intervened, on the other. These two facets of State conduct are dictated by the very nature of due diligence obligations, as it is the case of Article 19. As reiterated throughout the thesis, due diligence obligations are conduct rules that attract State responsibility for failure to act preventively and impede violence between private individuals from originating or escalating.²⁵

State responsibility to act with due diligence is both a systemic-level responsibility, [...] and also an individual-level responsibility, i.e., the responsibility of States to provide each victim with effective measures of prevention, protection, punishment and reparation.²⁶

To guarantee that partner abuse does not occur in the family unit and children are not exposed to IPV, States must respond to certain societal risk-factors associated with IPV. This implies addressing the stereotypes, traditional attitudes and social elements (*e.g. gender inequality*) that might be conducive to a climate of violence.²⁷ The CRC Committee recommends State interventions that empower children as right holders to develop the appropriate social skills and have access to specialised services before the violence reaches a critical point:

²³ *id.* para. 21

²⁴ *id.* paras. 59 and 72

²⁵ See French, D. and Stephens, T., 2014. International Law Association Study Group on Due Diligence in International Law; Stephens, T. and French, D., 2016. ILA Study Group on Due Diligence in International Law, Second Report, July 2016. *International Law Association, London*.

²⁶ United Nations General Assembly 2013. *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, A/HRC/23/49, para. 20.

²⁷ *Supra*, note 21, para.47 “Prevention measures include, but are not limited to: (i) Challenging attitudes which perpetuate the tolerance and condoning of violence in all its forms, including gender, race, colour, religion, ethnic or social origin, disability and other power imbalances”.

Children must be provided with as many opportunities as possible to signal emerging problems before they reach a state of crisis, and for adults to recognize and act on such problems even if the child does not explicitly ask for help. Particular vigilance is needed when it comes to marginalized groups of children who are rendered particularly vulnerable due to their alternative methods of communicating, their immobility and/or the perceived view that they are incompetent, such as children with disabilities.²⁸

But to respond to the obligation imposed by Article 19 of the CRC, States must comply with additional human rights obligations applicable to their adult parents. This includes upholding the rights provided by the Convention on the Elimination of Discrimination against Women (*abr.* CEDAW) such as Article 5 that demands that States tackle gender stereotypes.²⁹ Additionally, preventing IPV implies a strict compliance with the right to life (Article 6 of the International Covenant on Civil and Political Rights; *abr.* ICCPR) and prohibition of torture (Article 7 ICCPR).³⁰ These State obligations are usually triggered from the moment in which the State has received information that the victim and child has been exposed to IPV. As explained in an earlier chapter, the link between IPV and the due diligence obligations to protect the right to life and freedom from torture has been consolidated by the work of human rights bodies and regional jurisprudence.³¹ This link will be further expanded upon, when discussing teen dating violence. In family violence cases, the rights of the child and caregivers interact actively and children can transition from witnesses of violence to becoming victims of IPV. Such was the case of *Lenahan v. United States* where the violence between parents escalated to the point where it became fatal to the lives of the couple's children. State authorities, especially police forces, must then synchronise measures for a double compliance

²⁸ *id.* para. 48

²⁹ *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979. United Nations, Treaty Series, vol. 1249, at 13.

³⁰ *International Covenant on Civil and Political Rights*, 1976. United Nations, Treaty Series, vol. 999, at 171.

³¹ *E.g. Lenahan v. United States*, Inter-American Commission H.R. 2011., Judgement July 21, 2011, para.128. “The protection of the right to life is a critical component of a State’s due diligence obligation to protect women from acts of violence. This legal obligation pertains to the entire state institution, including the actions of those entrusted with safeguarding the security of the State, such as the police forces. It also extends to the obligations a State may have to prevent and respond to the actions of non-state actors and private persons”. See Nowak, M., 2012. Torture: Perspective from UN Special, Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment. *NTU L. Rev.*, 7, at 465.

with the right to life of parents and children.³² It is highly recommended that measures are coordinated between all stakeholders, to provide an adequate multi-exposure response to IPV. In providing this response, children must be regarded as primary right holders; a position that could often be difficult to negotiate with the interests of their parents. However, recognizing children as right holders in IPV represents a first step towards building due diligence interventions. States should then coordinate responses that offer protection to the adult victims of IPV- usually the mothers-; and at the same guarantee the best interest of the child is placed above all considered factors.

2.2 Best interests of the child

Placing the best interest of the child above all other considerations in State interventions connected to family violence is not only a principle but an expressive right recognised by the CRC. Article 3 of the Convention on the Rights of the Child states “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.³³ In cases of IPV, the right contemplated in Article 3 might attract a series of important reflections. First, regarding parental responsibilities, this article must be read in conjunction with Article 18 that demands that parents “have the primary responsibility for the upbringing and development of the child; [t]he best interests of the child will be their basic concern”.³⁴

Both articles reveal an imprecise intention of suggesting that, if and when IPV amounts to child maltreatment, parents could be held accountable for the exposure. A failure to assist parents in protecting children and ensuring their best development on behalf of the State might attract international responsibility, as per Article 19 discussed earlier. But the difficulty in enforcing this norm in IPV cases originates in the realities of the phenomenon and the fact that child maltreatment could overlap with forms of violence against women.³⁵ A misinterpretation of this norm might invite domestic legal developments or judicial action that

³² *Lenahan v. United States*, Inter-American Commission H.R. 2011., Judgement July 21, 2011, para.128. In the case of Jessica Lenahan v. United States, the victim failed to capture the attention of the police once her children were abducted by her former partner, which resulted in the death of her three daughters.

³³ *Supra*, note 19

³⁴ *id.*

³⁵ Kantor, G.K. and Little, L., 2003. Defining the boundaries of child neglect: When does domestic violence equate with parental failure to protect? *Journal of interpersonal violence*, 18(4), pp.338-355

holds the victim-parent accountable for the abuse, considering that parents have equal rights and responsibilities in regards to the child. Depending on the nature of IPV and the case in question, authorities mandated with the protection of the rights of the child should carefully ponder the participation of parents in a potential case of exposure-maltreatment. This might become challenging in cases of mutual abuse between parents. Moreover, the scholarship has noted that defining the thresholds of child maltreatment is difficult especially because children and women face violence together.³⁶ Few studies have focused on the parent's awareness regarding the consequences of IPV on children and the parent-child responsibility dynamic in violent family climates. At an international level, research is needed to better understand IPV through the eyes and experiences of the child in order for States to integrate efforts to aid parents in protecting children from parental conflict:

Despite the co-occurrence of child maltreatment and domestic violence, the service sectors that treat these problems often operate in independence. Child protective workers primarily focus on children, and battered women services focus on domestic violence.³⁷

Notwithstanding the need for further research and clarification to better grasp the shared responsibility of parents and the State to ensure the best interests of the children across their development, it becomes clear that parental education and parental empowerment are crucial. Awareness raising and re-educative measures that contemplate the responsibility of parents to combat family violence and value the best interest of the child in the context of inter-personal conflict could represent protective factors. The narrative of victim-blame must also be slowly replaced with a narrative of responsibility and children must be brought forward as right holders in their families and communities.

Children who have been exposed to domestic violence need our help, but more importantly, they need their parents' help. There are some parents who are simply unable to set aside their own hurts and make themselves available for the

³⁶ id.
³⁷ id.

kind of deep listening and relationship that is necessary for their children's healing.³⁸

Article 3 read in conjunction with Articles 18 and 19, supports the existence of an obligation of States to design legislation that contemplates child exposure to severe IPV as maltreatment and determine the thresholds and elements that could invoke parent responsibility, if and when causal relationships between exposure and negative consequences are detected. One interpretation of the rights contained in these three articles is that national legislation must impose duties on parents to not expose their children to the negative effects of IPV in order to comply with international human rights standards. The Convention and its application are living instruments meant to reflect social realities and needs.

Defining DV exposure as maltreatment appears to represent a modern shift in the social construction of maltreatment in response to increased public awareness and knowledge about the harmful outcomes associated with child exposure.³⁹

Finally, the right contained in Article 3 could set the foundation for renegotiating rights and responsibilities in the family, redistributing the power between the State and the parents within the family and linking parent responsibility to IPV prevention. The Convention on the Rights of the Child “provides clear authorisation to the State to protect children against all forms of violence in the home and family, and establishes its role as final arbiter of child welfare in the domestic arena”.⁴⁰

This should not be interpreted as a recommendation to promote punitive measures against parents or for promoting the child's separation from the family. Instead, these reflections should be carefully used to determine the ways in which States share responsibility with parents in protecting children against IPV: “before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities”.⁴¹

³⁸ Coffey, D.S., 2009. Parenting after violence. A guide for practitioners. *Institute for Safe Families*, pp.1-95.

³⁹ Lawson, J.N., 2014. *Domestic violence as child maltreatment: Differential risks and outcomes among cases referred to child welfare agencies for domestic violence exposure* (Doctoral dissertation, UC Berkeley).

⁴⁰ Pinheiro, P.S., 2006. World report on violence against children.

⁴¹ United Nations Committee on the Rights of the Child (CRC), 2013. *General Comment No. 14, The right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14.

2.3 The right to rehabilitation of child victims

An additional obligation related to children's exposure to IPV is derived from Article 39 of the Convention on the Rights of the Child that demands "all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts [...]; recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child".⁴² The right to rehabilitation of child victims has been linked to situations of torture and ill-treatment, child prostitution and pornography, economic exploitation and other forms of violence.⁴³ However, this norm additionally implies that when the exposure to IPV has reached a threshold of neglect or abuse, the State must then ensure that children have access to rehabilitation services. Due to their innate vulnerability, we can suspect that the threshold for abuse in IPV exposure for children is lower than the one measuring the severity of abuse between parents.

The obligation in Article 39 is significant in the discourse concerning children's exposure to IPV due to the fact that such exposure might attract long-lasting negative impacts on children.⁴⁴ To that effect, rehabilitation is vital in ensuring that children do not suffer long-term psychological consequences of family violence. One of these consequences could also impact societal climates, as IPV could become a learned behaviour with inter-generational effects.⁴⁵ In the Convention, rehabilitation comprises wide-ranging interventions aimed at promoting the recovery and reintegration of children.⁴⁶ Forensic and medical interventions need to be used together with psychological services accessible for all children who have witnessed family violence:

A supportive, non-offending caregiver is an important facilitator of a child's recovery. The most effective mental health interventions employ behavioural and cognitive techniques, and work with both the child and the family. Key skills for

⁴² *Supra*, note 19

⁴³ Hodgkin, R., Newell, P. and UNICEF, 1998. Implementation Handbook for the Convention on the Rights of the Child.

⁴⁴ *Supra*, notes 13 and 14

⁴⁵ Franklin, C.A. and Kercher, G.A., 2012. The intergenerational transmission of intimate partner violence: Differentiating correlates in a random community sample. *Journal of Family Violence*, 27(3), pp.187-199.

⁴⁶ *Supra*, note 41, at 589

children include skills to identify, process and regulate emotion; anxiety management skills; skills to identify and alter inaccurate perceptions; and problem-solving skills.⁴⁷

Parents should be made aware of the implications IPV can have on their children and be active participants in prevention and recovery processes. In fulfilling these obligations, parents and State authorities must be recognized as stakeholders and collaborate in the best interest of the child, as rehabilitation must be carried out in a safe environment. This environment is most often the family. The rehabilitation intervention of the State will also have to be adjusted to the case in question, depending on the severity of parental IPV, the awareness of the child and other individual factors such as “the developmental stage, emotional health and the healthy or unhealthy bonds between the child and other family members”.⁴⁸ The content of this obligation must then include awareness raising for “all those responsible for child protection, teachers, social workers and health workers” as well as caregivers.⁴⁹

A final observation related to children and IPV is in the context of protecting children from IPV once the victim-parent decides to leave the relationship. In these situations, children’s rights are especially important and can be potentially endangered. Interventions in these moments include ensuring the right to housing and education in the transitional stage of their parent’s separation, ensuring safe guardianship and custody and strengthening the protective factors that might lower the impact of witnessing parental violence.

Domestic courts usually play a vital role in managing the rights of children and legal consequences of IPV on their lives, especially in the context of custody battles that might follow IPV episodes. The connection between children’s rights and their parent’s rights appears to be complex in IPV cases, such as the case of transnational relationships, when foreign women trying to escape an abusive relationship, relocate their children in a third

⁴⁷ *Supra*, note 38

⁴⁸ *id.*

⁴⁹ *Supra*, note 41, at 598

country. Under the Hague Convention on the Civil Aspects of International Child Abduction these women can face charges for international child abduction.⁵⁰

Conceived of as a treaty that focuses exclusively on the child, the Hague Convention does not expressly recognize domestic violence against a spouse as a reason to deny the return of the child to the habitual residence, and in the case of battered mothers, often into the custody of the child's abusive father. [...] With little legal scaffolding, courts around the world have been left to wrestle with the role adult-to adult domestic violence should play in making decisions about child residence.⁵¹

Although the Hague Convention does not discuss intimate partner violence, in Article 20 it contemplates a refusal for return for a child facing or that has faced human rights violations.⁵² With a greater recognition of IPV as a human rights issue and implicitly a violation of the rights of the child, the protection of mothers and children escaping an abusive relationship with transnational implication could be reinforced. In the following chapters, I will highlight what due diligence entails for preventing children from becoming victims and perpetrators of IPV and what is required of States for the protection of those children witnessing parental violence.

3. State obligations to prevent teen dating violence

An additional way in which children are involved in IPV is through direct participation; as victims or perpetrators of partner abuse. In adolescence, children start forming romantic relationships and can begin to exhibit perpetration or victimization traits in a challenging environment. The Committee on the Rights of the Child notes: "reaching adolescence can mean exposure to a range of risks, reinforced or exacerbated by the digital environment, including substance use and addiction, violence and abuse, sexual or economic exploitation

⁵⁰ Edleson, J.L., Lindhorst, T., Mehrotra, G., Vesneski, W., Lopez, L. and Shetty, S., 2010. *Multiple perspectives on battered mothers and their children fleeing to the United States for safety: A study of Hague Convention cases*. US Department of Justice, National Institute of Justice.

⁵¹ *id.* at 2

⁵² *Convention on the Civil Aspects of International Child Abduction*, 1980. For the online text, see www.hcch.net or the United States Department of State (DOS) Bureau of Consular Affairs website, viewed October 2017, http://travel.state.gov/hague_childabduction.html

[...].⁵³ Teen dating violence is generally an understudied phenomenon and the human rights implications for preventing dating violence among youth have not yet been structured into an effective framework.

Teen dating violence can spawn peripheral violence. Friends and peers can be drawn into the violence and are often victimized themselves. Unfortunately, the severity of the teen dating violence problem is consistently ignored or minimized by adults.⁵⁴

A number of international human rights norms are relevant to determine the content of States' due diligence obligations to prevent TDV. Mentioned earlier, Article 19 of the CRC is also applicable to situations where children are perpetrators or victims of TDV. States have an active duty to ensure that children are "not exposed to domestic violence" and even when violence is perpetrated by children "the role of adults responsible for these children is crucial in all attempts to appropriately react and prevent such violence, ensuring that measures do not exacerbate violence by taking a punitive approach and using violence against violence".⁵⁵ The Committee on the Rights of the Child suggests that children perpetrating violence is an occurrence that should be seen as a by-product of their surrounding conditions:

Children who are aggressive towards other children have often been deprived of a caring family and community environment. They must be regarded as victims of their child-rearing conditions, which imbue them with frustration, hatred and aggression.⁵⁶

This interpretation is particularly important because it stresses the importance of adequate family and social conditions for the development of adolescent violence-free relationships. At the same time, this limits the responsibility of children for violent acts. This implies that responsibility falls upon caregivers and the State to promote non-violent surroundings in the best interest of the child (art. 3 and art. 18) when complying with preventive due diligence obligations. Additional human rights obligations related to preventing TDV can be found in

⁵³ United Nations Committee on the Rights of the Child (CRC), 2016. *General Comment No. 20 on the implementation of the rights of the child during adolescence*, CRC/C/GC/20.

⁵⁴ Sousa, C.A., 1999. Teen dating violence. *Family Court Review*, 37(3), pp.356-374.

⁵⁵ United Nations Committee on the Rights of the Child (CRC), 2011. *General comment No. 13, The right of the child to freedom from all forms of violence*, CRC/C/GC/13, paras. 21 and 27.

⁵⁶ *id.* para. 52

the CRC as well as other international instruments. Of uttermost importance is the protection of the right to life and protection against torture and ill-treatment that will be discussed in the following sections; as well as CEDAW provisions related to combating gender discrimination and stereotyping which contribute to societal and family violence.

3.1 The right to life and prohibition of torture

The right to life and prohibition of torture and ill-treatment, in the context of adult IPV, were thoroughly examined in Chapter III. Article 6 of the CRC also recognizes “that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child”.⁵⁷ Article 37 of the CRC guarantees freedom from torture and ill-treatment for all children.

The Implementation Handbook for the CRC mentions that “protection from violence and exploitation is also vital to maximum survival and development”.⁵⁸ The right to life and freedom from torture are also protected by Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR).⁵⁹ In General Comment 10, the Committee on the Rights of the Child has encouraged States to prevent juvenile delinquency and adopt measures that prioritize the right to life:

It goes without saying that delinquency has a very negative impact on the child’s development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child’s development.⁶⁰

The intersectional connection between IPV and the right to life or freedom from ill-treatment of children has not been acknowledged yet by human rights bodies and the literature examining this intersection is virtually non-existent. But the link between IPV and these two rights (contained in the ICCPR and other regional instruments) has been given attention in adult cases. The ECtHR has found violations of the right to life and prohibition of torture in IPV cases,⁶¹ and the new draft General Comment of the UNHRC contains a novel

⁵⁷ *Supra*, note 19

⁵⁸ *Supra*, note 41

⁵⁹ *International Covenant on Civil and Political Rights*, 1976. United Nations, Treaty Series, vol. 999, at 171.

⁶⁰ United Nations Committee on the Rights of the Child (CRC), 2007. *General Comment No. 10, Children’s rights in juvenile justice*, CRC/C/GC/10.

⁶¹ See *Kontrova v. Slovakia*, Appl. no. 7510/04, Judgment of 31 May 2007; *Halime Kılıç v. Turkey*, Appl. no. 63034/11, Judgment 28 June 2016.

interpretation to guarantee violations of the right to life associated with IPV.⁶² As highlighted in Chapter III, it is generally accepted that States have due diligence obligations to prevent IPV-related violations of the right to life and ill-treatment;⁶³ and the content of those obligation includes active State interventions. These include, among others, arresting the perpetrator, facilitating access to shelters and restraining orders, prosecuting the offence and creating social spaces that promote gender equality.⁶⁴

However, when IPV is perpetrated by children, the implications for State obligations to prevent these violations will be significantly different. First, teens might not possess the same initiative to disclose dating violence or have the knowledge on how to engage with State authorities and demand protection, without their parents. This has been confirmed by a recent study conducted in the United States:

Juveniles may face more barriers in dealing with dating violence in general and navigating the legal/court system specifically than adult victims. [...] Knowledge about the details of civil orders of protection, including who needs to be involved and where one gets an order were not known by the majority of respondents.⁶⁵

Secondly, age exclusion might imply that IPV legislation possesses adult-characteristics and that victims cannot obtain a protection order or that the order cannot be issued against a minor.⁶⁶ This implies that State responsibility is unlikely to be triggered for failure to prevent TDV due to the fact that often, State authorities will have no indication or suspicion that TDV might even take place or that it might escalate to reach fatality. For that reason, the most important aspect of the due diligence obligation to prevent TDV at the moment is to encourage States to enact TDV legislation; followed by efforts to promote awareness raising, encouraging reporting and accessibility of services for teens. Adult models of protection

⁶² In 2015, the United Nations Human Rights Committee held a half-day discussion on the topic of preparing a new General Comment related to article 6 at its 114th session celebrated in Geneva. At the present time the Draft General Comment has become available: CCPR/C/GC/R.36/Rev.2, pending its adoption.

⁶³ See *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009; Copelon, R., 1993. Recognizing the egregious in the everyday: Domestic violence as torture. *Colum. Hum. Rts. L. Rev.*, 25, at 291.

⁶⁴ Aziz Z.A., Moussa J., 2014. *Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women*, viewed February 2018, <http://www.duediligenceproject.org/ewExternalFiles/Due%20Diligence%20Framework%20Report%20Z.pdf>

⁶⁵ Klein, A.R., Salomon, A., Elwyn, L., Barasch, A., Powers, J.L., Maley, M., Gilmer, J.A., Pirchner, M., Harris, I., Tiffany, J.S. and Exner-Cortens, D., 2013. *An Exploratory Study of Juvenile Orders of Protection as a Remedy for Dating Violence*. No known publisher.

⁶⁶ id.

against IPV need to be adjusted to accommodate TDV in accordance with the rights of the child contemplated by the CRC.

Thirdly, prevalence studies disaggregating different typologies of TDV are rare and it is yet unclear which predominant abusive manifestations affect teens and what the risks factors for physical and non-physical violence affecting teens are. An important question is also what the thresholds demanded by international human rights law to determine violations of the right to life or ill-treatment for children might be. A study in Germany concluded that “controlling behaviour, verbal aggression, coercion and threats operationalized as emotional violence were the most common type of TDV”.⁶⁷ Whether State authorities should intervene at the mere disclosure of non-physical TDV to prevent violations of the right to life and ill-treatment; and how those interventions should look like remains an open question. But if and when State authorities will have gained knowledge of any form of abuse between teenagers and have failed to prevent its escalation, they could be liable under articles 6 and 37 of CRC if the abuse becomes fatal or amounts to ill-treatment. Moreover, the lack of available legal remedies for children, as right holders, to obtain protection against TDV could also attract international responsibility. For that reason, the Committee on the Rights of the Child recommends that all States “enforce law and judicial procedures in a child-friendly way, including remedies available to children when rights are violated”.⁶⁸

An additional reason why State interventions to protect the right to life of children in TDV are significantly challenging is the age of the perpetrator and the limitations it purports on criminal responsibility. The CRC advises that pre-trial arrest and deprivations of liberty should be used as a last resort;⁶⁹ and States should make an “attempt to find viable and constructive ways of avoiding a child or young person coming into contact with the justice system ‘unnecessarily’”.⁷⁰ The Beijing Rules also specify, on various occasions, that alternative and community-based interventions are recommended for juvenile offenders and that detention should be used for the least amount of time possible:

⁶⁷ Brzank, P., Liepe, K., Schillmöller, Z. and Blättner, B., 2014. Teen Dating Violence in Germany: Prevalence, risk factors and impairments: Petra Brzank. *European Journal of Public Health*, 24(suppl_2), pp. 166-150.

⁶⁸ *Supra*, note 21, para. 41

⁶⁹ *Supra*, note 1, Article 37

⁷⁰ United Nations Children's Fund International Child Development Centre (n.d). *Juvenile Justice*, Innocenti Digest, viewed January 2018, <https://www.unicef-irc.org/publications/pdf/digest3e.pdf>

The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system [...] The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.⁷¹

Balancing the rights of the victim child with the rights of the perpetrator child in TDV cases can be problematic. For adults, due diligence frameworks of protection in IPV cases have now been established.⁷² The content of due diligence obligations is discussed at large in the following chapters. However, it is important to note that research is needed in order to outline the implications of the *Prevent, Protect, Prosecute, Punishment and Provision of Redress* framework for TDV; with special consideration given to non-punitive mid-cycle interventions aimed at protecting the right to life and lowering recidivism risks for juvenile perpetrators.⁷³

3.2 Gender and age discrimination in TDV

Article 2 of the CRC declares that children shall not be discriminated against based on “the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. As discussed earlier in the thesis, Article 2 of the CEDAW also mandates States to condemn discrimination in all its forms and take all measures to ensure gender equality “through competent national tribunals and other public institutions”.⁷⁴ The prohibition of discrimination is reiterated in all international conventions and represents one of the most important human rights canons of our society. It has been argued that the CRC implicitly prohibits age discrimination under the inclusion of the words “other status”.⁷⁵ There are multiple ways in which discrimination could play a role in TDV. First and foremost, little is known at the moment about the gender asymmetry in TDV but it has been suggested that “in [teen]

⁷¹ United Nations General Assembly, 1985. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”), A/RES/40/33.

⁷² *Supra*, note 59

⁷³ *id.*

⁷⁴ *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979. United Nations, Treaty Series, vol. 1249.

⁷⁵ Ludbrook R. 1995. *Youthism: age discrimination and young people*, National Children’s and Youth Law Centre, Discussion Paper 004/00.

relationships where there is physical abuse” both individuals tend to be physically violent.⁷⁶ Elements such as gender and culture need to be better dissected in the context of teen dating violence.⁷⁷ Multiple studies on adult dating violence reflect that gender inequality, gender stereotypes and patriarchy and traditional gender attitudes are contributors to IPV and above all, predictors of violence against women.⁷⁸ Similarities and differences between IPV and TVD need to be substantiated by further research.

Children might also face discrimination based on their age and gender.⁷⁹ This discrimination could be formal, reflected in legal age exclusions, or institutional, affecting the attitudes of authorities coming into contact with children victims, questioning their credibility and undermining the dangers associated with TDV. In situations where parents are unaware of the existence of TDV, this can be particularly dangerous, leaving youth with no possibilities of seeking State interventions on their own.

There are many examples of laws and policies created to promote the welfare of children and young people having the effect of disadvantaging them with no corresponding benefits. Age criteria are often used arbitrarily to simplify the making or administration of laws, policies or programs affecting large numbers of people.⁸⁰

The WHO has underlined the existence of many cultural and social norms that affect children such as the idea that “female children are valued less in society than males” and “children have a low status in society and within the family”; and norms that might influence TDV such as male superiority and “right to assert power over a woman”.⁸¹ Combating discrimination to prevent TDV implies tackling specific risk-factors associated with the

⁷⁶ Auchter, Bernard, Mulford, Carrie F & Blachman-Demner, Dara R, 2013. Teen Dating Violence. *Violence Against Women*, 19(6), pp.756–770.

⁷⁷ *id.*

⁷⁸ Ali, P.A. and Naylor, P.B., 2013. Intimate partner violence: A narrative review of the feminist, social and ecological explanations for its causation. *Aggression and Violent Behavior*, 18(6), pp.611-619.

⁷⁹ United Nations Division for the Advancement of Women (DAW) 2006. *Elimination of all forms of discrimination and violence against the girl child*, UNICEF Innocenti Research Centre Florence, EGM/DVGC/2006/BP.1: “Discrimination and violence are experienced by girl children in all regions but the scope of the problem is different. In general, the prevalence of stereotypical social values regarding girls and denial of access to justice and remedies, particularly for male violence, are common problems”.

⁸⁰ *Supra*, note 71

⁸¹ World Health Organization, 2009. Changing cultural and social norms that support violence.

occurrence such as “rigid gender beliefs and attitudes supporting TDV”.⁸² In one study, young boys spoke about being afraid of social exclusion if their peers learned that they were experiencing TDV, saying that being a victim would make them feel like “less of a man”.⁸³ In its most recent General Recommendation 35, the Committee on the Elimination of Discrimination against Women has stressed:

The integration of gender equality content into curricula at all levels of education both public and private from the early childhood on and in education programmes with a human rights approach; it should target stereotyped gender roles and promote values of gender equality and non-discrimination, including non-violent masculinities, as well as ensure age-appropriate, evidence-based and scientifically accurate comprehensive sexuality education for girls and boys.⁸⁴

This recommendation is derived from the obligation States have to combat gender stereotypes as laid out in Article 5 of the CEDAW. Compliance with Article 5 could thus have the benefit of simultaneously reducing TDV and IPV. In regards to the barriers that age discrimination might pose to protecting children from TDV, it has been repeatedly acknowledged that “there is a widespread tendency to assume that adults are competent and, conversely, that children are lacking in competence”.⁸⁵ It is suggested that for the full realization of children’s rights, the notion of evolving capacities must be reflected in legislation and laws “that sets age-limits should include measures that respect children as the subjects of rights”:

Recognition must be given to the principle of non-discrimination in the implementation of all rights. Different age-limits with respect to boys and girls violate this principle.⁸⁶

Article 4(c) of the Declaration on the Elimination of Violence against Women also establishes a due diligence obligation “to prevent, investigate and, in accordance with national legislation,

⁸² Offenhauer, P. and Buchalter, A., 2011, June. Teen dating violence: A literature review and annotated bibliography. In *A report prepared by the Federal Research Division, Library of Congress under an interagency agreement with the Violence and Victimization Research Division, National Institute of Justice*.

⁸³ Whitaker, M.P. and Savage, T.E., 2014. Social-ecological influences on teen dating violence: A youth rights and capabilities approach to exploring context. *Journal of Child & Adolescent Trauma*, 7(3), pp.163-174.

⁸⁴ United Nations Committee on the Elimination of Discrimination Against Women, 2017. *General Recommendation 35 on gender-based violence against women, updating general recommendation No. 19*.

⁸⁵ Lansdown G. 2005. *The evolving capacities of the child*. Insight, I., UNICEF Innocenti Research Centre.

⁸⁶ *id.*

punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.⁸⁷ The Office of the Special Representative of the Secretary-General on Violence against Children has noted that one of the obstacles to fulfilling this preventive obligation is represented by gender stereotypes that obstruct girls’ access to justice.⁸⁸

In relation to TDV, these arguments emphasize that States must provide children with appropriate legal mechanisms to enforce their rights, when these have been violated by a third party, including other children. Due to the fact that “gender [...] has a significant impact of assumptions and consequent limitations that children” and that TDV might be characterized, at least in some States, by a gender asymmetry, significant attention must be paid to girls, victims of TDV.⁸⁹ Teen dating violence is also prevalent in LGBTQ teens where discrimination can also play a role, which is an additional reason why State interventions should be intersectional.⁹⁰ Research related to TDV is limited and at the moment, we cannot approximate where and how wide-spread institutional age and gender discrimination are. It is important to note that gender and age discrimination could represent violations of children’s rights generally and have significant negative impacts on preventing TDV.

This chapter has served to assess IPV holistically and present the human rights implications it attracts not only for the usual actors, victim and perpetrator, but for the children exposed to it. The chapter has also served to prove that the scope of State measures related to preventing IPV must be broadened, to include adolescents suffering from IPV, perpetrated by adults or other children. Unlike IPV in adults, at the moment we have a limited understanding regarding certain aspects of TDV, such as stable risk-factors, motivations or even protective factors. It is also unclear how certain domestic civil law aspects, such as the acquisition of legal personality and the limitations of criminal responsibility in childhood, can affect the prevention of IPV. Most importantly, this chapter must be viewed as a call for more research into the correlations, circumstances and protective measures for TDV, as well as an enhanced focus on children as right holders in IPV. Children play an important role in IPV not only through their own experience but their potential to influence parental IPV. It is purported that

⁸⁷ *Declaration on the Elimination of Violence against Women*, 1993. United Nations General Assembly, A/RES/48/104.

⁸⁸ United Nations, 2015. *Safeguarding the rights of girls in the criminal justice system, Preventing violence, stigmatization and deprivation of liberty*, United Nations Publications.

⁸⁹ *id.*

⁹⁰ NJEP, n.d. *LGBTQ issues in Teen Dating Violence. National Judicial Education Program*, viewed January 2018, <https://www.legalmomentum.org/sites/default/files/reports/LGBTQ%20Fact%20Sheet%20Final.pdf>

“by improving child behaviour, it may be possible to improve a number of parent behaviour, as well”.⁹¹ In a recent study, it was suggested that omega-3 supplementation in children can improve children’s behaviour which in turn can alleviate IPV intensity and benefit the family unit.⁹² Consequently, it is important to re-direct research and intervention efforts towards children and explore how child interventions can reinforce positive outcomes in parents.

In the next chapter, the analysis related to the nature of due diligence obligations will advance and consist of an exploration of due diligence contextually. Through selected human rights bodies decisions, the chapter will evidence what a due diligence State conduct consists of and the circumstances in which States have failed to prevent IPV.

⁹¹ Portnoy, J., Raine, A., Liu, J. and Hibbeln, J.R., 2018. Reductions of intimate partner violence resulting from supplementing children with omega-3 fatty acids: A randomized, double-blind, placebo-controlled, stratified, parallel-group trial. *Aggressive behavior*.

⁹² *id.*

Chapter V: The due diligence doctrine as a standard for preventing intimate partner violence

1. Introduction
2. The nature of due diligence obligations
3. Intimate partner violence and a new era of State obligations
4. The recognition of due diligence obligations in human rights law litigation

1. Introduction

The present chapter analyses the normative design of due diligence obligations to prevent IPV within the international human rights system. As a distinct set of obligations, due diligence obligations represent a modern normative construct. Due diligence obligations might originate from treaties but their content has been developed in the guiding interpretive documents of international human rights bodies, such as General Comments, General Recommendations or within the quasi-judicial human rights case law. All international human rights norms are norms of international law and for that reason, this chapter begins by identifying how due diligence obligations fit the matrix of public international law sources. The chapter inquires whether due diligence represents a principle of international human rights law, a minimum standard contained within certain obligations or if it qualifies as international obligations *per se*. To that end, the chapter discusses the concept of State responsibility and international wrongful acts attributable to the State. In the previous chapters, States' obligations associated with IPV have been identified. In this chapter, I move a step further, analysing what the content of these obligations is and what are the practical steps due diligence demands from States in order to comply with these obligations and avoid international liability. The chapter also considers the difference between positive, negative and due diligence obligations, as part of a new era of State obligations that require additional positive impact, a specific anticipatory State conduct. The doctrinal analysis in this chapter focuses on variations of the due diligence concept across regional regimes and the interpretation, scope and legal standing of notable cases in different regional systems.

2. The nature of due diligence obligations

Due diligence is a concept that can be traced back to roman law, having its origins in the *diligens paterfamilias* standard requiring prudence in the conduct of the head of the household and consequently, liability for negligence.¹ In international law, due diligence is often presented as a standard of conduct, contained in Article 3 of the International Law Commission's Draft Articles on Transboundary Harms and Article 4(c) of the Declaration on the Elimination of Violence against Women adopted by the United Nations General Assembly in 1993. Due diligence also appears in the United Nations Guiding Principles on Business and Human Rights and in Annex IV Article 12(3b) of the United Nations Convention on the Law of the Sea.² Due diligence is featured prominently not only in international human rights law but also, in other areas of international law such as environmental or business law.

As an introductory note to discussing the normative content of due diligence obligations of States to prevent IPV, it is necessary to evaluate where these obligations originate and how they fit into the matrix of international norms. It is common for international lawyers and scholars to refer to the Statute of the International Court of Justice,³ namely Article 38(1), to determine the sources of public international law and implicitly international human rights law:

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;
- (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

¹ Bonnitche, J. and McCorquodale, R. 2013. *Is the Concept of 'Due Diligence' in the Guiding Principles Coherent?*, viewed October 2017, <https://ssrn.com/abstract=2208588>

² See additionally: *Convention on the Law of the Sea* 1982. United Nations Part XII, articles 192-194.

³ *Statute of the International Court of Justice*, 1946. United Nations, viewed September 2017, <http://www.refworld.org/docid/3deb4b9c0.html>

It has been suggested that the rule describing the sources of international law seems to be outdated and insufficient for resolving certain modern legal dilemmas.⁴ Appreciating how the concept of due diligence fits within the sources of Article 38 is indeed a dilemma. This difficulty arises from the fact that the concept draws its elements from various areas of international law and extends into various regional human rights systems where it developed certain separate features. In regards to IPV, it has been argued in Chapters III and IV that States have various obligations to prevent human rights violations associated with IPV and such obligations arise from international conventions such as CEDAW, ICCPR, CAT, CRPD and CRC. However, as due diligence represents the product of purposive interpretation it has not been expressly included within the text of international treaties. That is because due diligence obligations are not a specific set of positive or negative obligations that we find in a particular human rights instrument. Rather, they refer to an operational mandate that requires an institutional behaviour orientated towards fulfilling human rights obligations and avoiding international liability. In many ways, due diligence is a process rather than an instruction or an outcome.

The due diligence principle is a critical tool in the formulation of accountability. By making the State accountable for violence perpetrated by non-State actors, public international law recognizes that VAW, regardless of who commits it, constitutes human rights violations.⁵

Due diligence appears to be formulated either as a principle, a standard of conduct or a typology of international obligations in different documents and scholarship materials. For example, French and Stephens observe in the first ILA Report⁶ that due diligence reflects a standard of treatment in international investment law while referring to due diligence obligations of States in international humanitarian law.⁷ Two years later, in the second ILA Report they consolidate a much more definitive concept of due diligence, as a standard of conduct.⁸ Bonnitcha and McCorquodale also refer to the due diligence standard of conduct

⁴ Koskenniemi, M. ed., (2017). *Sources of international law*. Routledge, at 60-61.

⁵ *id.*

⁶ Int'l Law Ass., 2014. *ILA study Group on due diligence in international law*, First Report, viewed October 2016, www.ila-hq.org/download.cfm/docid/8AC4DFA1-4AB6-4687-A265FF9C0137A699

⁷ *id.* at 7-12

⁸ Stephens, T. and French, D., 2016. ILA Study Group on Due Diligence in International Law, Second Report, July 2016. *International Law Association, London*.

when trying to elucidate the concept's implications for international business.⁹ Thus, it becomes evident that different thematic areas of public international law might have developed different due diligence notions.¹⁰ The same authors suggest: “this lack of conceptual clarity does not necessarily imply any internal inconsistency”.¹¹ However, it is difficult to demand that States comply with due diligence models if we are to consider them as simple standards of conduct, as the notion of standards is not a source of international law.

It then follows that a sense of clarity in regards to how the concept fits with Article 38(1) would be needed. As mentioned before, deciding whether due diligence is a principle or a typology of obligations complementary to the positive-negative binary is a difficult task. Martignoni suggests “it is important to situate the standard within the context of general principles of state responsibility under international law” implying that due diligence obligations represent a general principle in international human rights law.¹² Among other documents, due diligence appears linked to violence against women in the DEVAW,¹³ CEDAW General Recommendation 19 (1992) and the most recent Recommendation 35 of the same Committee (2017).¹⁴ Moreover, the concept of due diligence is shaped in relation to gender violence and suffers alternations through time and regional systems.

In both the DEVAW and GR19 written in the 90's due diligence was referred to more as a principle, a method for institutional behaviour (“exercise due diligence”, “act with due diligence”). The same language is maintained by the CEDAW Committee in 2005 in the case of *A.T v Hungary* when they refer to the State's failure to *act* with due diligence.¹⁵ However, in the most recent GR 35, the Committee is more firm and refers to “due diligence obligations

⁹ *Supra*, note 1

¹⁰ *Supra*, note 8, at 2: “Due diligence is core to many areas of international law for the primary reason that there is no uniformity in the standard of conduct expected of States or international organisations in discharging their international legal responsibilities that range across a wide arena of obligations and potential harms to other actors”.

¹¹ *Supra*, note 1

¹² Benninger-Budel, C. ed., 2008. *Due diligence and its application to protect women from violence* (Vol. 73). Brill. see Bourke-Martignoni, J., 2008. The history and development of the due diligence standard in international law and its role in the protection of women against violence. In *Due diligence and its application to protect women from Violence* (pp. 47-62). Brill. at 49.

¹³ *Declaration on the Elimination of Violence Against Women*, 1993. A/RES/48/104, Article 4c.

¹⁴ United Nations Committee on the Elimination of Discrimination against Women, 1992. *General Recommendation 19. Violence against women*, para. 9; United Nations Committee on the Elimination of Discrimination against Women, 2017. *General Recommendation 35 on gender-based violence against women, updating general recommendation No. 19*, para. 24.

¹⁵ *A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005, para. 9.

for acts and omissions of non-State actors”.¹⁶ As we will see throughout this chapter, developments from various human rights regional systems led to the concept of due diligence being mainstreamed in the discourse of violence against women. Throughout time, these developments contoured due diligence obligations as an upgrade to an already existing notion of positive obligations of States. If we go back to the moment due diligence penetrated the international human rights system, namely in the Latin American regional case of *Velasquez Rodriguez v Honduras* we encounter the following formulation of the Inter-American Court:

An illegal act which violates human rights [...] can lead to international responsibility of the State not because of the act itself but because of the lack of due diligence to prevent the violation.¹⁷

This historical narrative is important due to the fact that since the late 80’s until today, the common element of every due diligence discussion appears to be the responsibility of States generated by means of omissions. This element of accountability for ineffectual State conduct and preventive responses has been a stable component of due diligence, despite the plethora of concepts surrounding its denomination. In regards to IPV, it is now accepted that “if States fail to protect women from systemic intimate violence they technically are in breach of international law and the principles of state responsibility apply”.¹⁸

I have argued in Chapters III and IV that IPV is associated, depending on the case in question, with one or multiple human rights violations due to the existence of various human rights obligations such as the protection of the right to life or prohibition of torture. A step further is determining when an act of private individuals is attributable to the State. When and what turns a private law situation into a public one and how does IPV become an international wrongful act? The International Law Commission has developed a set of rules to determine when a State is liable for a wrongful act.¹⁹ There are two important elements needed to trigger State responsibility: conduct and wrongfulness.²⁰ The element of conduct is primarily important in the discussion of due diligence obligations, because these have also been called

¹⁶ *id.*

¹⁷ *Velasquez Rodriguez v. Honduras*. Inter-Am.Ct.H.R Judgment of July 29, 1988,. (Ser. C) No. 4. para. 172.

¹⁸ Meyersfeld, B., 2010. *Domestic violence and international law*. Bloomsbury Publishing, at 193.

¹⁹ International Law Commission, 2001. *Draft Articles of Responsibility of States for Internationally wrongful Acts with commentaries*, Report of the International Law Commission on the work of its fifty-third session, A/56/10.

²⁰ *Supra*, note 18, at 194

obligations of conduct.²¹ The ILC discusses in Article 12 when a State's conduct constitutes a breach of an international obligation:

In some cases precisely defined conduct is expected from the State concerned; in others the obligation only sets a minimum standard above which the State is free to act. Conduct proscribed by an international obligation may involve an act or an omission or a combination of acts and omissions.²²

The ILC goes further to consider the difference between obligations of conduct and obligations of result. The commentary clarifies that in regards to eliciting responsibility, both sets of obligations have the same weight in international law and implicitly that both acts and omissions bear validity to triggering international responsibility.²³ Since direct acts and omissions are recognized by international law as elements of an international wrongful act, it is precisely the State's conduct related to the acts of private individuals that eventually makes a violation *attributable* to the State.²⁴ To determine whether the conduct of the State in an IPV situation is wrongful, we must first establish what particular conduct is required from States. What does the human rights system ask from State officials exactly? We find this answer precisely in the content of due diligence obligations that will be discussed throughout this chapter and the following chapters. Frequently, to comply with due diligence obligations, international human rights law demands a lack of passivity, a pro-active State intervention, implication and interest in protecting the rights of individuals. In the context of IPV, this is achieved through the 5 Ps.

It is also important to note that due diligence obligations to prevent VAW and implicitly IPV have been categorized as individual or systemic.²⁵ Rashida Manjoo, former Special Rapporteur on Violence against Women has written on the subject, to explain the different types of State interventions expected from national agencies mandated with the prevention of IPV and protection of human rights.²⁶

²¹ *Supra*, note 6, at 14-18

²² *Supra*, note 19, see Article 12

²³ *id.* at 56-57

²⁴ *Supra*, note 18, at 194

²⁵ Manjoo, R., 2013. State Responsibility to act with Due Diligence in the Elimination of Violence against Women. *International Human Rights Law Review*, 2(2), pp.240-265.

²⁶ United Nations General Assembly, 2013. *Report of the Special Rapporteur on violence against women, its causes and consequences*, prepared by Rashida Manjoo, A/HRC/23/49.

Systemic due diligence refers to the obligations States must take to ensure a holistic and sustained model of prevention, protection, punishment and reparations for acts of violence against women. At a systemic level, States can meet their responsibility to protect, prevent and punish by, among other things, adopting or modifying legislation; developing strategies, action plans and awareness-raising campaigns and providing services; reinforcing the capacities and power of police, prosecutors and judges; adequately resourcing transformative change initiatives; and holding accountable those who fail to protect and prevent, as well as those who perpetrate violations of human rights of women.²⁷

Systemic due diligence, as Manjoo portrays it, seems to refer to State interventions aimed at lowering or eradicating societal risk factors for IPV; broader interventions targeting all individuals in society and addressing root factors such as gender stereotypes or creating special legislation. On the other hand, individual due diligence seems to refer to particular singular interventions that take into account an individual's personal circumstances.²⁸

Individual due diligence appears thus concentrated on targeting individual and relational risk factors and a combination of both can be presumed to be holistic and promote a protective response against IPV. In general, due diligence obligations can be regarded as intermediary obligations, regulating the State's relationship (represented by all its institutions and stakeholder in IPV) with private individuals involved in IPV. Due diligence, or simply put the duty of States to *act diligently* while fulfilling their positive obligations, triggers State responsibility when the State fails to actively intervene or respond to prevent the initiation or escalation of IPV. In that sense, due diligence obligations are types of extended positive obligations. In the following pages, I will expand on the notion of positive obligations and obligations of conduct and display the added value of due diligence obligations in respect to the traditional State dichotomy.

²⁷ id. para.71

²⁸ id., para. 70: "*Individual due diligence refers to the obligations States owe to particular individuals, or groups of individuals, to prevent, protect, punish and provide effective remedies on a specific basis. Individual due diligence requires flexibility, as procedures taken in these instances must reflect the needs and preferences of the individuals harmed. States can fulfil the individual due diligence obligation of protection by providing a woman with services such as telephone hotlines, health care, counselling centres, legal assistance, shelters, restraining orders and financial aid*".

3. IPV and a new era of State obligations

When discussing due diligence obligations, a concept of compliance that is fairly new and ambiguous in the international human rights system, it is helpful to rely on adjacent notions. Aside from a State's responsibility for wrongful acts that was previously examined, the notions of dichotomy and trichotomy as well as the difference between obligations of result and conduct, help build a more coherent due diligence narrative. It is almost impossible to understand what the due diligence doctrine demands from States without referring to the typologies of States' human rights obligations.

In the sphere of international human rights law, it has become universally accepted that a human rights obligation entails three duties: respect, protect and fulfil.²⁹ This is known as the tripartite division of human rights, a revised notion of the four layered human rights structure promoted by Asbjorn Eide in the 80's.³⁰ The tripartite notion incorporates the classic dichotomy of positive and negative State obligations and it is suggested to apply to both civil and political rights, as well as economic, social and cultural rights.³¹ The negative aspect of the tripartite version is related to the duty to *respect* which translates into a prohibition for States to *interfere* in the enjoyment of an individual's human rights.³² The positive obligations contained in the tripartite version refer to the obligation of States to *protect* which require States to ensure that individuals are protected against third party violations and the duty to *fulfil* requires that States design legislative and policy models that conduce to the full realization of human rights.³³ Eide has also referred to the difference between obligations of conduct and obligations of result:

An obligation of conduct (active or passive) points to a behaviour which the duty holder should follow or abstain from. [...] The obligation to respect the freedom of the individual is an obligation of conduct, but it does not necessarily follow that an

²⁹ United Nations, n.d.. *The Foundation of International Human Rights Law*, viewed April 2018, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>

³⁰ De Schutter, O. 2012. *Economic, social & cultural rights* (law-861-001), Academy on Human Rights and Humanitarian Law, Specialized Summer Session.

³¹ See Koch, I. E. 2005. Dichotomies, trichotomies or waves of duties?. *Human Rights Law Review*, 5(1), pp 81-103.

³² *id.* at 82

³³ *id.*

obligation of result necessarily requires that the state actively fulfils the needs of individuals, by being a provider of material goods.³⁴

Situating due diligence between conduct and result is difficult and perhaps not entirely necessary. There have been critiques related to this limiting division that does not allow for a combination of the two typologies in the form of goal-oriented obligations.³⁵ Although State conduct is important in lowering the prevalence of IPV and preventing the escalation of abuse, “obligations of result focus on the achievement of a specific and concrete change of facts”.³⁶ Most States are trying to lower the rates of IPV homicides and we can agree that generally, the right to life carries within itself a strong component of required result. However, how the State behaves between the moment of having knowledge of an abusive relationship and the moment the victim loses his/her life or manages to regain safety represents a matter of conduct and the outcome is very much dependent on the authorities’ comportment. In the context of IPV, obligations of result and conduct are merged, demanding diligent conduct to obtain or avoid certain results. Those results do not need to be illusory, and it can be simply traced how many IPV cases result in an escalation or decrease of violence.

It is also important to note that in the international human rights system, there has been a tension concerning the ideas of immediate realization of civil and political rights and the alleged progressive realization of economic, social and cultural rights in accordance with each State’s available resources.³⁷ However, the elimination of discrimination in the realization of economic, social and cultural rights has been deemed to be subjected to immediate realization.³⁸ Since economic, cultural and social rights are one of the tools for the prevention of IPV, this debate is noteworthy in the discussion of due diligence. The implications of

³⁴ Eide, A. 1989. Realization of social and economic rights and the minimum threshold approach. *Human Rights Law Journal*, 10(1-2), pp. 35-51, at 42.

³⁵ Wolfrum, R. 2010. *Obligation Of Result Versus Obligation Of Conduct: Some Thoughts About The Implementation Of International Obligations*. In *Looking to the Future*, Brill, pp. 363-384, at 366.

³⁶ *id.* at 367

³⁷ See Office of the United Nations n.d.. *Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet 33*, High Commissioner for Human Rights at 13; United Nations, 1990. CESCR *General Comment No. 3: The Nature of States Parties’ Obligations* (Art. 2, Para. 1, of the Covenant), E/1991/23. See Brems, E., 2009. Human rights: Minimum and maximum perspectives. *Human Rights Law Review*, 9(3), pp.349-372: “It is possible that a state lacks the resources to guarantee even the minimal level of protection of a particular right (e.g. vaccination of all children against certain diseases); yet as soon as the resources are sufficient, they must be spent as a matter of priority on the satisfaction of the core obligations”.

³⁸ *id.* Brems: “Progressive realisation is not the full story of economic and social rights. [...] Even for those rights to which progressive realisation applies, a violations discourse is increasingly used”.

progressive realization for the prevention of IPV will be discussed in the following chapters. At this point, it is worth remarking that progressive and immediate realization of human rights are relevant concepts that might help determining what due diligence entails in certain situations.

Due diligence represents a paradigm shifting standard due to the fact that it requires active intervention rather than passive compliance. Within its operational limits, it debunks the rigid boundaries of the public and private divide, linking private individuals and States in a common effort and accountability for the protection of human rights.³⁹ Due diligence is a simple consequence of the nature of the international human rights system that was created to ensure that an individual's rights are protected; it requires that the State mediates private relations ensuring that individuals do not violate each other's rights. In regards to IPV, due diligence requires additional effort and expands the respect, protect and fulfil layers into the 5 Ps: prevent, protect, prosecute, punish and provision of redress. The 5 Ps have been brought forward in the Due Diligence Project by Aziz and Moussa and recently recognized as part of the normative content of due diligence, by the CEDAW Committee:

States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women.⁴⁰

Due diligence represents a new era of State obligations due to this particular expansion. For IPV, the most important elements of due diligence are perhaps the duties to prevent and provide reparations, since the other 3 elements were already implied by the protect-fulfil axis. Prevention can be defined as the “action so as to avoid, forestall, or circumvent a happening, conclusion, or phenomenon” although the Latin etymology of the word *praevenire*, suggest an anticipatory conduct.⁴¹ For IPV, this is crucial because as it has been explained earlier,

³⁹ *Supra*, note 1; See Johanna Bourke-Martignoni, 2008. The History and Development of the Due Diligence Standard in International Law and its Role in the Protection of Women against Violence, Due Diligence and its Application to Protect Women from Violence:” *Non-state actors such as international organizations, transnational corporations and individuals are also capable of infringing human rights. The role of such actors at the domestic and international level has changed in the past decade*”.

⁴⁰ United Nations, 2017. Committee on the Elimination of Discrimination against Women, *General Recommendation 35 on gender-based violence against women, updating general recommendation No. 19*.

⁴¹ See Farlex Partner Medical Dictionary 2012. *praevenire*. n.d. Burton's Legal Thesaurus, 4E 2007, viewed April 2018, <http://legal-dictionary.thefreedictionary.com/praevenire>

abusive episodes occur and often, they are likely to escalate. There are two important moments with two different preventive requirements involved in intimate partner violence: anticipative prevention and escalation mitigation. Anticipative prevention requires fulfilling those human rights linked to the roots of IPV manifested in certain individual, relational or societal risk factors. This type of prevention is focused on protecting and fulfilling economic, social and cultural rights and ensuring that harmful gender stereotypes are combated and risk factors are systematically addressed.

Strategies that look at underlying causes of violence against women ease the burden and cost of post-incidence intervention.⁴²

A wide range of recommendations have been made in regards to preventing IPV. The CEDAW Committee, in its recent General Recommendation 35 has manifested the importance of implementing legislative, judicial and executive measures that target “patriarchal attitudes and stereotypes, inequality in the family and the neglect or denial of women's civil, political, economic, social and cultural rights, as well as to promote women’s empowerment, agency and voice”.⁴³ Generally, anticipative prevention is hard to achieve due to the fact that it requires State laws and policies to benefit all individuals and guarantee that intimate partner abuse does not begin to manifest in a particular society. Thus, this requires that policies or laws benefit *everyone*, regardless of their risk factors, that is, regardless of socio-economic status, gender, education or even individual issues, such as mental health status, disabilities or any other differentiator.

As an example, Norway is a nation that ranks high in the Gender Inequality Index, on the 6th position.⁴⁴ According to the Global Data base of Violence against Women, IPV lifetime prevalence in Norway is 27% while physical and sexual IPV in the last 12 months is 6%.⁴⁵ At

⁴² Aziz Z.A., Moussa J., 2014. *Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women*, viewed February 2018, <http://www.duediligenceproject.org/ewExternalFiles/Due%20Diligence%20Framework%20Report%20Z.pdf>

⁴³ *Supra*, note 40, para. 34

⁴⁴ United Nations Women n.d.. *Global Database on Violence against Women, infra: The Gender Inequality Index is a composite measure reflecting inequality between women and men in three different dimensions: reproductive health, empowerment (share of parliamentary seats held by women and share of population with at least some secondary education), and labour market participation (labour force participation rate)*. Source: United Nations Development Programme. *Human Development Report 2016*, viewed April 2018, <http://hdr.undp.org/en/2016-report>

⁴⁵ *id. infra*. European Union Agency for Fundamental Rights, 2014. *Violence against Women: An EU-wide Survey*. Luxembourg: Publications Office of the European Union.

the same time, Sweden ranks higher in gender equality, on the fourth position, although IPV lifetime prevalence is slightly higher, at a 28%.⁴⁶ Denmark, which ranks second in the gender inequality index, has a higher IPV lifetime prevalence of 32%.⁴⁷ On the other hand, according to the same database, Romania, a country ranking 72nd in gender equality has a lifetime IPV prevalence of 24%, much lower than the Scandinavian countries known for their gender egalitarian values in both the private and public spheres. It is questionable whether these numbers accurately reflect the entire reality of IPV or correlations between gender equality and lower IPV rates.

That is most likely due to the long-time acceptance and tolerance for IPV in countries like Romania where a great number of episodes go unreported and a bigger condemnation and reporting in countries like Norway or Sweden. Thus, factors such as gender empowerment, the participation of women in parliaments and the political life or their participation in the labor market do not tell the whole story of IPV. Achieving gender equality might not represent a safe bet for combating IPV in all cases. It might aid the elimination of IPV but, as I have argued throughout the thesis, other measures might be necessary as well. For that reason, preventive anticipation has to take into account all factors, individual, societal and relational. Measures should not be considered in isolation. A combination of policies, focused on socio-economic equality, mental health initiatives and positive relationships promotion could be fruitful, if States would manage to shift risk factors into protective factors by means of anticipative prevention. In the following chapters, the normative content of this particular due diligence aspect will be discussed with examples suggesting what anticipative prevention represents in action.

The second IPV due diligence aspect is what I define as escalation mitigation, which refers to the conduct of institutions that have gained knowledge that a relationship is faced with violence and take all appropriate steps to prevent its escalation and furthermore guarantee that both the victim and perpetrator benefit from their individual human rights throughout the following proceedings. At the stage of gaining knowledge of the abuse, most important is due diligence in regards to the right to life and prohibition of torture, but throughout the civil and criminal proceedings various State institutions will likely be required to balance certain

⁴⁶ United Nations, n.d.. *Women, Global Database on Violence against Women*, viewed April 2018, <http://evaw-global-database.unwomen.org/en/countries/europe/sweden>

⁴⁷ id.

human rights, such as the right to privacy, the right to housing, the right to a fair trial, etc. This second aspect will also be discussed in the following pages and concrete examples will be provided to illustrate what a diligent conduct implies.

4. The recognition of due diligence obligations in human rights law litigation

In the present section, I discuss several human rights decisions across diverse regional systems in order to portray the difference between anticipative prevention and escalation mitigation; and at the same time, to illustrate what constitutes a diligent State intervention and what does not. Certain human rights bodies decisions are repetitive, in the sense that they deal with similar facts and similar legal arguments. For that reason, I have selected landmark decisions that portray innovative due diligence elements, new links between due diligence and certain human rights or that present a new factual situation. By reviewing the most important decisions across the Inter-American, international and European systems I will also underline the historic progression of due diligence and certain features it may present in these different regional systems. It is also important to note that there are not many cases where a human rights body decided in favor of the State in an IPV context, but the case of *Rumor v. Italy* will be examined to that end.

Due diligence came to the realm of human rights in 1988 in the inter-American case of *Velasquez Rodriguez v Honduras*,⁴⁸ a case regarding forced disappearances. It is not until 2001 that the inter-American Commission decides a case of domestic violence and interprets the concept in the case of *Maria da Penha Maia Fernandes v. Brazil*.⁴⁹ This case concerned a woman who was repeatedly assaulted by her husband who tried to murder her in 1983 and suffered paraplegia and severe physical and psychological harm as a consequence.⁵⁰ At the time of her petition da Penha maintained that “the Brazilian justice system had dragged its feet for more than 15 years without handing down a final ruling against the ex-husband, who has been free during that entire period”.⁵¹ During those 15 years, Brazil also ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against

⁴⁸ *Supra*, note 17

⁴⁹ *Maria da Penha Maia Fernandes v. Brazil*. Inter-Am. C.H.R. 2000. Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20, rev. 16.

⁵⁰ *id.* para. 9

⁵¹ *id.* para. 19

Women which allowed the Commission to sanction the attitude of the Brazilian State under the provisions of fair trial and equality before the law, as well as specific VAW provisions:

The violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfil the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices. That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.⁵²

In this case, it is evident that Brazil has failed to prevent societal gender discrimination and address societal risk factors and the violent climate was a result of its failure to comply with anticipative prevention. Once the authorities were informed of the abuse, they have not put into motion any preventive mechanisms and they did not try to offer assistance to the victim despite her vulnerable physical condition. If the abuse did not escalate any further, in this case, it wasn't due to any State intervention, considering the investigation and sanctioning were delayed and ineffective.

Years later, a similar case was heard by the CEDAW Committee. In the case of *A.T. v Hungary*, the mother of a disabled child is severely and repeatedly abused by her husband, while the legal system does not provide for a restriction order and shelters are not equipped for disabled children.⁵³ The State initiated two criminal proceedings against the perpetrator but he is never detained; fearing for her life, the victim asks for interim measures and the case results in the sanction of Hungary, found in violation of various CEDAW articles. The Committee decides the case under Articles 2 (discrimination), 5 (gender stereotypes) and 16 (equality in the marriage).⁵⁴ In both cases, the IPV stories are broader than the abuse the women suffered, in the sense that disability and the wellness of children are important elements that are left unheard and unexamined by international human rights bodies. Unfortunately, the CEDAW Committee can only hear cases concerned with the CEDAW

⁵² id. para. 56

⁵³ *A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005.

⁵⁴ id. para. 9.2

Convention and it is unlikely that a victim would submit the same case for subsequent evaluation under the CRC and the CRPD. However, it is worth noting that a common procedure of examining a claim under various human rights Conventions would be highly beneficial for victims of IPV and their children. A simultaneous submission to more than one human rights body would be beneficial for the formulation of a broader legal argument; and to establish the legal nexus between various human rights at stake in IPV, offering an intersectional response and simultaneous protection for women and children.

In the case of *A.T v Hungary*, the woman had a brain-damaged son who continued to be exposed to violence despite the mother's attempt to contact child services and gain their cooperation. The Committee decided that the legislative and institutional arrangements in Hungary were not equipped to provide effective protection against IPV and noted : “women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy”.⁵⁵ The Committee observes here how protection against IPV requires a balancing act and establishes a priority between human rights. The Committee also noted “aspects of the relationships between the sexes and attitudes towards women” that are harmful and socially prevalent and conducive to a climate of violence and found the State in violation of its obligations contained in Articles 5 and 16 of the CEDAW.⁵⁶ Similarities can be observed in both cases, related to the attitudes of institutions, both the police forces and the judiciary, that failed to aid both victims. The attitude of tolerating IPV and not taking the claims seriously, the failure to recognize the threat to women's lives and discriminatory attitudes are common societal risk factors in IPV cases. After the Hungarian case, the CEDAW Committee worked to slowly build its legal argumentation and in subsequent cases insists on the importance of Article 5 referring to gender stereotypes and traditional attitudes.

In 2005, the same Committee hears the case of *Yildirim v. Austria*.⁵⁷ The case differs from the previous two already discussed in two main elements: the Austrian police had intervened and “paid close attention to the case” although ineffectively as the victim of abuse ultimately died within a month of her first phone call to the authorities. During that month, the police received numerous phone calls from the victim who was threatened almost on a daily basis by

⁵⁵ id. para. 9.3

⁵⁶ id. para. 9.4

⁵⁷ *Yildirim v. Austria*, Communication No. 6/2005, 6 August 2007.

her husband. In some instances, the police failed to notify the prosecutor of these incidents. The perpetrator was never arrested and Austria had to justify in front of the CEDAW Committee the legality of his lack of detention. Austria claimed that the prosecutor “had to weigh the basic right to life and physical integrity of the person filing the complaint against the basic right to freedom of the suspect, who had no criminal record at the time and did not give the impression to the intervening police officers of being highly aggressive”.⁵⁸ The decision was criticized by the CEDAW Committee who expressed that “the failure to have detained Irfan Yildirim as having been in breach of the State party’s due diligence obligation to protect Fatma Yildirim”.⁵⁹ In this case, the Committee did not find a link between traditional attitudes in Austria and the IPV case under consideration and did not sanction Austria under Article 5. The Committee did find however that the facts merited a sanction under Articles 2 and 3, for failure to guarantee the deceased her fundamental freedoms, in this case her right to life and physical and mental integrity.⁶⁰

The case of *Yildirim v. Austria* portrays a common example of due diligence as escalation mitigation, where authorities have an opportunity to intervene and prevent the escalation of violence into irreversible damage. Arrest alone is not a solution to preventing long-term IPV and the scholarship is still divided on whether arrest impacts future IPV recidivism.⁶¹ In the *Yildirim* case, it is easy to observe how arresting the perpetrator might have prevented the death of the victim but police forces and prosecutors are not always faced with black or white situations. In an article examining mandatory arrest for IPV in Alaska, Clark observes that in certain cases victims are uncooperative and police arrive at the scene to find ambiguous recalls of the facts:

Often there is no clear evidence that a crime was in fact committed. How should the state respond? [...] Just because there is no injury or a minor injury does not necessarily mean there is not serious, imminent danger; and conversely, a serious injury does not necessarily mean there was a crime or is any ongoing danger.⁶²

⁵⁸ *id.*

⁵⁹ *id.* para. 12.1.5

⁶⁰ *id.*

⁶¹ See Williams, K. R. 2005. Arrest and intimate partner violence: Toward a more complete application of deterrence theory. *Aggression and Violent Behavior*, 10(6), 660-679.

⁶² Clark, P. A. 2010. Mandatory Arrest for Misdemeanor Domestic Violence: Is Alaska's Arrest Statute Constitutional. *Alaska L. Rev.*, 27, 151, at 153 and 193.

IPV often consists of complex situations and the work of the police and the judiciary to estimate future dangerousness and arrest the perpetrator is difficult and subject to specific standards of domestic laws. This aspect of positive obligations has been discussed by the ECtHR in the case of *Opuz v Turkey* where the European Court established that a violation can arise only if (a) the authorities knew or ought to have known that there is a real and immediate risk to an individual's human rights and (b) they fail to take appropriate measures to lower or eliminate that risk.⁶³

Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. It must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers.⁶⁴

Although the assessment is done on a case by case basis, it is enough for the authorities to have knowledge of an abusive episode and not act in the full spectrum of their powers and capacities in order to trigger international responsibility. This can occur through a failure to arrest the perpetrator, to accompany the victim to retrieve belongings, a delayed response and arrival at the scene or discounting non-physical forms of abuse and having a passive attitude towards what they perceive as less serious accusations.

In the case of *Jessica Lenahan v. United States*, despite having obtained a restraining order and seeking to enforce it against her ex-husband, the victim failed to capture the attention of the police once her children were abducted by her former partner, which resulted in the death of her three daughters.⁶⁵ In her petition to the Inter-American Court, the victim expresses that she was shocked at the passive attitude of the police, despite her repeated calls and that the police officer said “there was nothing he could do because the children were with their

⁶³ *Opuz v. Turkey*, Appl. no. 33401/02, Judgment of 9 June 2009.

⁶⁴ *id.* para. 129

⁶⁵ *Lenahan v. United States*, Inter-American Commission H.R. 2011., Judgement July 21, 2011, paras. 20-30.

father”.⁶⁶ The victim also alleged that the police failed to duly investigate the death of her children and she was never given vital information regarding the circumstances in which her ex-partner shot their three daughters.⁶⁷ The position of the State in regards to the attitude of the police has been that the criteria of “ought to have known” (foreseeability) was not met and there was no clear evidence to suggest the perpetrator would become physically aggressive:

The State recognizes that available information does suggest that Simon Gonzales was emotionally unstable and had been displaying erratic behaviour before the murder of the girls, but there is very little in the evidentiary record to suggest that Simon Gonzales was prone to physical violence. The fact that the restraining order granted regular and substantial parenting time to Simon Gonzales outside of the family home would lead a reasonable person to conclude that neither Jessica Lenahan nor the Court considered Simon Gonzales to pose a physical threat to his children.⁶⁸

As discussed earlier, the task of the police to assess the risk in these situations is indeed difficult. Usually, an individual with a history of erratic behaviour and emotional instability is not necessarily prone to violence, although some psychological circumstances represent risk factors in cases of intimate relationships and domestic disputes. In the 5 hours the victim communicated with the police and repeatedly expressed her concern, it was difficult to access all previous declarations and gain knowledge of all the facts pointing to a potential physical threat. In her previous police declarations, the victim did recall the ex-husband threatening to kidnap the children and imposing abusive discipline towards them; which would offer reasonable information to consider him a threat.⁶⁹ Acting with due diligence would perhaps require that the authorities involve the victim in the risk assessment process, as they possess key information that might not be efficiently communicated in situations of distress and urgency. Cannon-Smith et. al argue that victims possess intuitive and sensitive information that might not be evident in criminal records and that they ought to be involved in the risk-assessment process for IPV recidivism, complementing other methods such as the actuarial

⁶⁶ id., para. 26

⁶⁷ id., para. 32

⁶⁸ id., para. 49

⁶⁹ id., para. 65

one.⁷⁰ In the Lenahan case, the Inter-American Commission decided that the mere existence of a restraining order confers reasonable suspicion that the victim and her children might face a threat and they need special protection:

The Commission considers that the issuance of a restraining order signals a State's recognition of risk that the beneficiaries would suffer harm from domestic violence on the part of the restrained party, and need State protection. This recognition is typically the product of a determination from a judicial authority that a beneficiary – a woman, her children and/or other family members – will suffer harm without police protection. [...]. A proper response would have required the existence of protocols or directives and training on how to implement restraining orders, and how to respond to calls such as those placed by Jessica Lenahan.⁷¹

Accordingly, the failure of the State's authorities to act with due diligence in the Lenahan case lead to it being found in breach of its obligations to protect the right to life and offer equal protection before the law. The authorities did not take the appropriate steps to mitigate the escalation of violence which lead to the loss of three lives. It is important to note that in certain IPV cases that involve children, pets or common property, the threat to security is not always directed towards the partner's life and safety but as it is in the Lenahan case, orientated towards others. Acting diligently thus requires State officials to assess all the risks, including those that go beyond the individual suffering the abuse.

The Lenahan case bears strong similarities to the case of *Kontrovà v. Slovakia* decided by the European Court of Human Rights in 2007.⁷² The applicant, who had suffered abuse from her husband had been in contact with the authorities after an abusive episode in which her husband threatened to kill himself and their two children. Within the next four days he shot their two children and himself, without the police ever intervening to offer protection to the applicant and her children. The authorities failed to open an investigation and offer any

⁷⁰ Connor-Smith, Jennifer K., Henning, Kris, Moore, Stephanie, & Holdford, Robert. 2011. Risk Assessments by Female Victims of Intimate Partner Violence: Predictors of Risk Perceptions and Comparison to an Actuarial Measure. *Journal of Interpersonal Violence*, 26(12), pp. 2517-2550.

⁷¹ *Supra*, note 65, paras. 142-145

⁷² *Kontrova v. Slovakia*, Appl. no. 7510/04, Judgment of 31 May 2007.

protection to the applicant, thus not mitigating the risk of escalation of violence. The ECtHR explained:

The authorities had been made sufficiently aware of the existence of a real and immediate risk to the life of her children from her husband's criminal acts. They should have classified his threats and abusive behaviour as criminal offences and investigated them *ex officio*. They had, however, failed to take adequate measures within the scope of their powers that might have been expected to prevent him from carrying out his threats.

The ECtHR underlined in this case an important aspect of due diligence for IPV: classifying certain threats as criminal offences and starting an investigation without delay. A small study of British and American police has found that police officers are more likely to perceive a risk of escalation of partner violence if the initial complaint has elements of physical violence.⁷³ These findings are confirmed by an Australian study that suggests that physical IPV contributes to a decision of police officers to start an investigation or seek a restraining order.⁷⁴ That is perhaps because police officers are not appropriately trained to recognize the patterns and characteristics of IPV, to classify certain behaviours as non-physical IPV and to duly criminalise non-physical IPV.

Police expect most incidents of domestic violence to be a one-off situation, as opposed to a pattern of abuse.⁷⁵

Due diligence in the form of escalation or reoccurrence mitigation goes beyond the right to life. The ECtHR has decided numerous cases of domestic and intimate partner violence and has found States in breach of Article 3 of the Convention that prohibits inhuman or degrading treatment. In the case of *Balsan v. Romania* the ECtHR manifested an example of contexts in

⁷³ Robinson, A.L., Pinchevsky, G.M. and Guthrie, J.A., 2016. A small constellation: risk factors informing police perceptions of domestic abuse. *Policing and Society*, pp.1-16: "Officers also appeared to focus on a small constellation of risk factors that they considered to be both very important as well as essential when evaluating risk: using or threatening to use a weapon; strangulation; physical assault resulting in injury and escalation of abuse. These factors seem to signify to police officers – both British and American – what it means for a victim to be at high risk".

⁷⁴ Perez Trujillo, M. and Ross, S., 2008. Police response to domestic violence: Making decisions about risk and risk management. *Journal of interpersonal violence*, 23(4), pp.454-473.

⁷⁵ *id.*

which a State has breached its obligations to prevent torture and ill treatment.⁷⁶ The applicant, in possession of two forensic medical certificates attesting to her physical abuse, pursued criminal complaints against her husband for two years. The prosecutor chose to not press criminal charges but placed an administrative sanction on the perpetrator; and after navigating the appeal system the case finally reached a criminal court investigating the perpetrator for bodily harm. The domestic Court acquitted him on the basis that the “defendant’s acts are not so dangerous to society as to be considered crimes”.⁷⁷ The European Court found that the repetitive abuse the applicant had suffered was grave enough to constitute ill treatment and signalled with concern that the attitudes of the authorities were consistent with institutional victim-blaming:

[...] the Court concluded with grave concern that the authorities had found that Ms Bălșan had provoked the domestic violence against her and considered that it was not serious enough to fall within the scope of the criminal law.⁷⁸

It becomes clear that institutional victim-blaming along with systemic gender discrimination and the privatization of IPV are common obstacles and patterns in the failure of States’ to prosecute partner abuse.⁷⁹ Institutional victim-blaming in regards to IPV lacks extensive research but a study from Cambodia illustrates two narratives behind the idea that women aid their victimization. Firstly, the fact that IPV is perceived as an emotional occurrence irreconcilable with the rationality of legal systems and secondly, the “submissive tendencies” of women that aid the construction of impunity.⁸⁰ Other contributing factors are “an environment of chronic under-resourcing, lack of legal knowledge, and poor training, which severely hinders their ability to assist victims”.⁸¹ An Australian study found that the attribution of blame is not a decisive factor in the police’s decision to charge IPV perpetrators but other factors such as alcohol consumption also influence.⁸² At the same time, police were found to hold stereotypical attitudes and to be reluctant to get involved in IPV cases and more

⁷⁶ *Balsan v. Romania*, Appl. no. 49645/09, Judgement 23 August 2017.

⁷⁷ *id.* para. 26

⁷⁸ European Court of Human Rights, 2017. *Court finds that there is a lack of commitment in Romania to address domestic violence*, ECtHR 164 (2017), Press Release Issued 23.05.2017.

⁷⁹ See e.g. Hart, B., 1993. Battered women and the criminal justice system. *American Behavioral Scientist*, 36(5), pp.624-638.

⁸⁰ Brickell, K., 2017. Clouding the Judgment of Domestic Violence Law: Victim Blaming by Institutional Stakeholders in Cambodia. *Journal of Interpersonal Violence*, 32(9), pp.1358–1378.

⁸¹ *id.*

⁸² Stewart, A. & Maddren, K., 1997. Police officers' judgements of blame in family violence: The impact of gender and alcohol, *Sex Roles*, 37(11), pp. 921-933.

likely to criminalize violence between males.⁸³ Victim blaming in police responses will be further detailed in the upcoming chapters that will focus on policy recommendations for police training.

The privatization of IPV as well as institutional victim blaming originate from a lack of anticipative prevention and are societal patterns that nurture a climate of violence by perpetrating gender stereotypes and inequalities. In *Balsan v. Romania*, the apathy of the police and the lack of investigation and further prosecution, was grave enough to cause ill treatment, and was rooted in gender discrimination. Even when an investigation is prompted by the authorities, the investigation needs to be effective and meet certain criteria. This approach is expanded upon by the ECtHR in the case of *Valiulienė v. Lithuania* in relation to Article 3 of the European Convention.⁸⁴ The applicant had been physically abused by her partner on several occasions and tried to bring a private prosecution only to be dismissed by prosecutors under the justification of a law reform that did not allow the case to proceed further. For 6 years the applicant tried to navigate the Lithuanian legal system and criminalize the ill treatment she was subjected to, unsuccessfully. The ECtHR found that “the manner in which the criminal-law mechanisms were implemented, did not provide adequate protection to the applicant against acts of violence”.⁸⁵ The Court’s reasoning was based on the idea that the provision of ill treatment (Article 3 of the Convention) needs to be read in conjunction with Article 1 of the European Convention requiring States to “secure to everyone within their jurisdiction the rights and freedoms defined in the Convention”.⁸⁶ One of the most interesting remarks of the Court refers to due diligence obligations:

States [are obligated] to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions, and this requirement also extends to ill-treatment administered by private individuals.⁸⁷

⁸³ id.

⁸⁴ *Valiulienė v. Lithuania*, Appl. no. 33234/07, Judgment of 26 March 2013.

⁸⁵ id. para. 83

⁸⁶ id. para. 72-76

⁸⁷ id. para. 75

Effective investigations and prosecutions are two essential elements of due diligence in IPV cases and will also be discussed in the next chapters. It is important to note that between 2010 and 2012, the ECtHR developed its jurisprudence regarding IPV as ill treatment in cases such as the ones presented above. Earlier, IPV cases were generally considered under Article 8, the provision concerned with the right to private and family life. For example, in the early case of *A. v. Croatia* with a final judgment released in 2011, the factual circumstances did point towards breaches of Article 2 and 3, respectively ill treatment and violations of the right to life.⁸⁸ In this case, the applicant had endured multiple threats to her life, physical abuse as well as verbal abuse in front of their daughter.⁸⁹ The abuse lasted for years and the authorities had knowledge of the risk factors for perpetration that her ex-husband was exhibiting: PTSD, anxiety and severe mental disorders. Moreover, the ex-husband hired a private detective to stalk the applicant and when she pursued a restraining order, her appeals were dismissed under the justification that she did not prove there had been a risk to her life. Despite seeking remedies under Articles 2 and 3 of the European Convention, the Court only considered the circumstances under Article 8:

The Court considers that the State authorities had a positive obligation to protect the applicant from the violent behaviour of her (former) husband. This obligation might arise under all three Articles of the Convention relied upon, namely Articles 2, 3 and 8. However, in order to avoid further analysis as to whether the death threats against the applicant engaged the State's positive obligation under Article 2 of the Convention, as well as issues pertinent to the threshold for the purposes of Article 3 of the Convention, the Court will analyse the circumstances of the present case from the standpoint of Article 8 of the Convention.

It is unclear why the ECtHR failed to recognize the State's violation of Article 3, especially since the jurisprudence was somewhat consolidated in previous cases such as *Kontrova v. Slovakia*. If and when the facts of a case might point to multiple human rights violations, it would be more logical that priority is given to considerations of peremptory norms and norms of customary international law, such as the right to life and prohibition of torture and degrading treatment. To complicate things further, in the same case, the European Court

⁸⁸ *A. v. Croatia*, Appl. no. 55164/08, Judgment of 14 October 2010.

⁸⁹ For a brief summary of the facts, see European Court of Human Rights, 2010. *Croatian authorities failed to protect mother against domestic violence of mentally-ill ex-husband*. Press Release no. 751.

discussed the concept of moral and physical integrity as elements of the right to private and family life of Article 8:

The physical and moral integrity of an individual is covered by the concept of private life. The concept of private life extends also to the sphere of the relations of individuals between themselves. There appears, furthermore, to be no reason in principle why the notion of “private life” should be taken to exclude attacks on one's physical integrity.⁹⁰

The European Court decided thus to broaden the scope of Article 8, despite having enough evidence to assess a violation of Croatia's positive obligations under Articles 2 and 3. This could have set a dangerous precedent of conceptualizing IPV as an issue of private and family life despite the fact that the abuse might have reached the threshold of ill treatment.

A similar case of IPV and child abuse as violations of the right to family and private life is *Bevacqua and S. v. Bulgaria*.⁹¹ The applicant has been subjected to physical abuse by her husband and opened proceedings for divorce and custody of their child. During those proceedings, the abuse escalated and she was unable to obtain interim measures regarding custody. After the divorce, the abuse continued and she was unable to obtain the prosecution of her husband, as her allegations to the police were deemed “light bodily injuries”.⁹² Despite alleging a violation of Article 3, the European Court assessed the facts under Article 8, declaring that the State's apathy and failure to provide assistance has breached the positive obligations aspects of the right to family life. The case was decided in 2008 and this appears to be an era when the ECtHR was consolidating a doctrine linking IPV with Article 8. The majority of cases linking IPV with Article 3 and allegations of ill treatment are from 2012 onwards and we can definitely observe a difference in how factual circumstances are sanctioned in early cases such as *Bevacqua* or recent cases such as *Balsan*.

The cases presented above in all regional systems portray common and evident breaches of multiple human rights and their similarity conveys a clear message, that States can pay greater attention to their risk assessment and intervention in order to comply with their obligations. It

⁹⁰ *Supra*, note 85, para. 58

⁹¹ *Bevacqua and S. v. Bulgaria*, Appl. no. 71127/01, Judgement 12/09/2008.

⁹² *id.* para. 38

is also important to analyse what constitutes a legal intervention and what are the facts surrounding a case where a human rights body has found no violation. These are rare occurrences.

In the case of *Rumor v. Italy*, the applicant was physically abused and threatened with a knife and scissors on one occasion, following the arrest of her husband and the rapid intervention of the Italian police.⁹³ Within the next couple of months, the perpetrator was found guilty of attempted murder and aggravated violence and incarcerated.⁹⁴ When he petitioned the Court to serve the rest of his sentence under house arrest, he was denied, based on the proximity of the location with the applicant's residence. He petitioned again and was granted house arrest only after the inspection of the reception centre where he would serve his sentence. Moreover, in the custody proceedings he was prohibited to contact his children who witnessed the abusive incident and lost his parental rights. The European Court was called to decide on a violation of Articles 3 (prohibition of ill treatment) and Article 14 (prohibition of discrimination). Considering the applicant's claims of psychological distress and traumatic effects of the abusive episode, the Court decided it was "sufficiently serious to amount to ill-treatment".⁹⁵ In deciding whether Article 3 was breached, the ECtHR needed to further determine if the authorities took all steps to prevent the reoccurrence of violence, or what I defined as escalation mitigation. The Court established that the State has not breached its obligations, based on the following elements:⁹⁶

- Prosecutors and domestic judicial system did not remain passive
- Perpetrator was arrested, tried and convicted
- The proceedings were led in a suitable time without unnecessary delays
- The applicant was granted sole custody of the children

All these elements sum up a diligent State intervention in this particular case. It is worth mentioning that the Court also found that States do not have a positive obligation to inform victims of IPV regarding "the criminal proceedings against the perpetrator, including about possible release on parole from prison or transfer to house arrest".⁹⁷ The cases presented in

⁹³ *Rumor v. Italy*, Appl. no. 72964/10, Judgement 27/08/2014.

⁹⁴ *id.* for a description of the factual circumstances see paras. 6-30

⁹⁵ *id.* para. 61

⁹⁶ *id.* para. 63-68

⁹⁷ *id.*

this chapter illustrate what does and does not constitute a diligent State intervention in a practical context and how it can vary depending on the victim's and perpetrator's circumstances.

The importance and effectiveness of human rights bodies decisions in cases of IPV was recently upheld by the Supreme Court of Spain.⁹⁸ In an unprecedented decision, the Spanish Court ordered that Angela Gonzales, a victim of IPV and applicant to the CEDAW (*González Carreño v. Spain*) was to be paid 600,000 euros in compensation for the irreparable damage suffered at the hands of her ex-husband who killed their daughter.⁹⁹ The decision of the Supreme Court of Spain is unique due to the fact that it underlines the direct enforceability of human rights bodies decisions in national jurisdictions. Unlike the ECHR, human rights bodies decisions in the UN system do not fall under the same enforcement mechanisms and, until now, it was unclear how an applicant can use a favourable decision at the UN to obtain redress nationally. The Spanish Court considered that the CEDAW decision represented the reference for the formulation of an administrative claim, suing the public administration for their breach of due diligence obligations and for requesting an immediate pecuniary compensation. This judgment gives considerable weight to human rights bodies decisions and could lead to the adoption of national enforcement mechanisms in the future, allowing for the direct translation of favourable human rights decisions into national remedies. Indeed, the lack of a direct enforcement mechanism represents a normative gap between the international human rights law system and domestic law. Jones and Manjoo suggest that this gap represents a “proxy via which we can ascertain the cost of the lack of explicit international law on violence against women and girls”.¹⁰⁰ However, this normative gap is not isolated to the CEDAW but affects all international human rights bodies and their decisions; making the enforcement of these decisions in national contexts questionable and confusing. It is important that through future reforms, States and human rights bodies establish firm avenues of enforcing human rights bodies decisions.

⁹⁸ Supreme Court of Spain, 2018. Judgement no. 1263/2018, Contentious-Administrative Chamber, Fourth section, viewed September 2018, [translated from Spanish], <https://www.womenslinkworldwide.org/files/3045/sentencia-angela-tribunal-supremo.pdf>

⁹⁹ United Nations, 2012. *CEDAW Communication No. 47/2012*. Committee on the Elimination of Discrimination against Women Fifty-eighth session 20 June-18 July 2014, CEDAW/C/58/D/47/2012.

¹⁰⁰ Manjoo, R. and Jones, J. eds., 2018. *The Legal Protection of Women from Violence: Normative Gaps in International Law*. Routledge, at 53-56.

The ECHR along with other human rights bodies will continue to develop their jurisprudence on IPV and it is likely that due diligence conduct will be clarified further in the context of the right to life and prohibition of torture. In the following chapter I will also develop the analysis of the elements of due diligence known as the 5 Ps (*Prevent, Protect, Prosecute, Punish, Provision of Redress*) and discuss how stakeholders should combine efforts to prevent IPV. I will also explain how due diligence interventions often require a balancing act of human rights and what are the possible limitations of due diligence interventions.

Chapter VI: The Due Diligence Framework and State Conduct

1. Introduction
2. Prevent, Protect, Prosecute, Punish, Provision of Redress
3. Due diligence procedures in the context of intimate partner violence
4. Limitations to due diligence obligations: State interference and State intervention

1. Introduction

This chapter examines the content and effects of the 5 Ps, namely *Prevent, Protect, Prosecute, Punish, Provision of Redress*, the main elements of the due diligence framework. When conducting the analysis of the 5 Ps, these elements will be linked to human rights and State obligations identified in Chapters III and IV. In that sense, I will refer to (a) mid-cycle interventions that guarantee protection against torture and violations of the right to life for those who are already victims of intimate partner violence as well as (b) early due diligence interventions targeting societal risk factors and elements that contribute to the development of a climate of violence. I have described these two aspects of due diligence as escalation mitigation and anticipative prevention. Within this chapter, the meaning of these interventions will be discussed in order to clarify what concrete steps States can take for an effective compliance with the 5 Ps.

Multiple international guiding documents will be analysed, such as the Handbook for Legislation on Violence against Women¹, the Handbook on Effective police responses to violence against women² and the Due Diligence Project Report³ to illustrate the normative content of the 5 Ps. These guiding documents, along with reports from practitioners and other stakeholders, will help elucidate what measures States should adopt to prevent IPV. The documents contain best practices as well as implementation guidelines and bridge the gap between general norms and specific interventions.

¹ United Nations, 2010. *Handbook for legislation on Violence against Women*, Department of Economic and Social Affairs Division for the Advancement of Women, viewed April 2018, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

² United Nations, 2010. *Handbook on Effective police responses to violence against women*, Office on Drugs and Crime, viewed April 2018, https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf

³ Aziz Z.A., Moussa J., 2014. *Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women*, viewed April 2018, <http://www.duediligenceproject.org/ewExternalFiles/Due%20Diligence%20Framework%20Report%20Z.pdf>

Obstacles to adopting State measures and how the 5 Ps respond to the plurality of legal systems will also be discussed. An essential part of due diligence for IPV, regardless of the stage of the State's intervention is represented by risk and how States interpret, react and define risk when gaining knowledge of an abusive relationship. Escalation mitigation can be successful if authorities adequately and effectively intervene in an IPV case, responding to individual circumstances and risks. For that reason, the chapter also includes notes on risk-management and risk-assessment for IPV, linking due diligence with the socio-ecological understanding of IPV introduced earlier in the thesis. Moreover, the present chapter identifies due diligence procedures and underlines the importance of a continuous development of the due diligence framework.

2. Prevent, Protect, Prosecute, Punish, Provision of Redress

In earlier chapters, it has been established that States have due diligence obligations to prevent IPV and that an adequate intervention of the authorities is vital both for the protection of human rights and compliance with international standards. Within working circles and groups of domestic violence professionals, State representatives or human rights lawyers the question of how States can truly make a difference for victims and perpetrators of IPV is often voiced. Most Western countries have not remained indifferent to IPV and have shown the willingness to combat the phenomenon by creating laws and institutions mandated with IPV prevention, some a decade old.⁴ Other States are lagging behind, slowly incorporating such legal provisions.⁵

In some countries, the increased media reporting has also sparked social conversations around IPV, shining a light on its realities, prevalence and the struggles of victims. Women around the world have started to protest against the systemic violence they face and are

⁴ E.g. *Spanish Organic Law 1/2004 of 28 December on Integrated Protection Measures against Gender Violence*; *Irish Domestic Violence Act 1996*; *Lithuanian Law on Protection Against Domestic Violence (2011)*. European Institute for Gender Equality, 2017. *Glossary of definitions of rape, femicide and intimate partner violence*, at 31-36, viewed January 2018, <http://eige.europa.eu/rdc/eige-publications/glossary-definitions-rape-femicide-and-intimate-partner-violence>

⁵ See e.g. Committee on the Elimination of Discrimination against Women 2016. Consideration of reports submitted by States parties under article 18 of the Convention, Fifth periodic report of States parties due in 2016, Turkmenistan, para 83: “*In Turkmenistan, there is no specific law on violence against women, although after the Committee’s concluding comments of 2012 and its detailed recommendations, there has been an ongoing discussion on the need to adopt such legislation*”; CEDAW Concluding observations on the eighth periodic report of Kenya 2017. CEDAW/C/TKM/5, para. 22: “*The Committee welcomes the adoption of the Protection against Domestic Violence Act (2015)*”.

putting pressure on States to assume accountability and manage resources effectively in order to stop partner violence.⁶ Despite the increased visibility and social anxiety surrounding IPV, little has changed and questions regarding how to better State protection against IPV are pressing.⁷ Due diligence interventions can indeed represent a solution, if understood and employed as a comprehensive and unitary framework. In regards to IPV and other forms of violence against women, due diligence obligations have been referred to as the 5 Ps, by academics,⁸ human rights organizations,⁹ and recently the CEDAW Committee in its latest recommendation on the topic of gender violence.

Most recently, it has been suggested that the due diligence framework should contain 2 additional elements: probing and promoting awareness and adherence to non-discrimination, expanding the framework to 7 Ps.¹⁰ It is uncertain whether this new framework will be adopted and expanded upon by international human right bodies but these new developments suggest that due diligence is gaining terrain as the leading tool for combating violence against women and consequently IPV.

2.1 Prevent

The first element of due diligence obligations is prevention; and it has been discussed throughout earlier chapters that States have a direct human rights obligation deriving from various international sources to prevent IPV. Prevention, in this context, means acting with the purpose of impeding the phenomenon from ever arising, and I have referred to these

⁶ E.g, Viewed January 2018: Protests 2016-2017 in Spain, <https://www.thenational.ae/world/europe/women-take-to-the-streets-of-madrid-in-their-thousands-to-protest-violence-1.678712> ; in France and Turkey <https://www.voanews.com/a/thousands-march-protest-violence-against-women/4136996.html> ; protests in Argentina <https://www.theguardian.com/world/2016/oct/19/argentina-women-strike-violence-protest>.

⁷ For example, in Spain, the total number of IPV homicides reported by the Government is 71 (2003), 72 (2004) and 44 (2016) and 48 in 2017. This represents a 32 to 38 % drop in prevalence over the span of 12 to 14 years despite the Government's increased legislative and policy efforts to combat IPV. Moreover, the number of calls to the violence against women hotline has increased from 55.810 in 2012 to 71.895 in 2017, suggesting a possible general increase in other type of abusive manifestations. See Ministry of Health, Social Services and Equality n.d.. *Statistics Network*, Government of Spain viewed January 2018 [translated from Spanish]: <http://estadisticasviolenciagenero.msssi.gob.es/>

⁸ *Supra*, note 3

⁹ AWID 2018. *Due Diligence & State Responsibility to Eliminate Violence Against Women: Region Asia-Pacific*, Observatory on the Universality of Rights, viewed January 2018, <https://www.oursplatform.org/resource/due-diligence-state-responsibility-eliminate-violence-women-region-asia-pacific/>

¹⁰ Sarkin, J., 2018. A Methodology to Ensure that States Adequately Apply Due Diligence Standards and Processes to Significantly Impact Levels of Violence Against Women Around the World. *Human Rights Quarterly*, 40(1), pp.1-36.

conducts as to constitute anticipative prevention. In this early stage, the State has no theoretical knowledge about the existence of abuse between romantic partners and thus, cannot respond to individual circumstances or risk-factors. In this *moment zero*, the State must already have in place social macro-measures that guarantee the absence of criminal behaviour, and in particular, the absence of any factor that might conduce to partner violence. Anticipative prevention should thus contain general measures of preventing criminality, usually in place in most States, and specific measures that address the IPV criminal model.

Prevention programmes must a) include socio-structural support such as education, employment and housing; b) address intersectional issues and risk factors that perpetuate violence, such as gender inequality, stereotypes and cultural perceptions of women, poverty, women's education and economic independence and c) formulate and implement laws that not only address specific forms of VAW but also its underlying causes.¹¹

Anticipatory measures must target “changing mindsets and modifying behaviour to reject violence against women” and implicitly IPV thus focusing most on societal risk factors for IPV.¹²

Primary prevention to reduce IPV means changing attitudes. [...] To implement universal IPV screening, attitudes will need to change.¹³

Factors related to attitudes were discussed in Chapter II; they are connected to weak community sanctions against partner violence and traditional gender norms conducive to violence. Interventions focused on changing attitudes should embrace “cultural adaptation” and be constructed to respond to the cultural context where IPV prevention is targeted; “determining what unique cultural factors are predictive of IPV.”¹⁴ Anticipative prevention

¹¹ *Supra*, note 3, at 13

¹² *id.* at 15

¹³ Coker, A.L., 2006. Preventing Intimate Partner Violence. *American Journal of Preventive Medicine*, 30(6), pp.528–529.

¹⁴ Renzetti, Claire et al., 2017. *Preventing Intimate Partner Violence: Interdisciplinary Perspectives.*, Bristol: Policy Press, at 29-31.

consists mostly of measures that need to unfold over generations and necessitate long-term sustained societal efforts.¹⁵

The first step States can take to prevent IPV is guaranteeing that legislative prohibitions of IPV are duly constructed, based on human rights principles. The UN Women Handbook for legislation on violence against women recommends comprehensive legislative frameworks “criminalizing all forms of VAW, and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social, psychological), as well as adequate punishment of perpetrators and availability of remedies for survivors”.¹⁶ The same Handbook insists on the importance of gender-sensitive laws favouring a combination of “gender-neutral and gender-specific provisions to reflect the specific experiences and needs of female complainants/survivors of violence, while allowing the prosecution of violence against men and boys”.¹⁷

An important recommendation contained in the same Handbook is related to the responsibility of authorities who fail to comply with VAW and IPV provisions. The Handbook advises that penalties for non-compliance should be put in place within national systems, in the form of dereliction of duty provisions.¹⁸ This legislative suggestion is important because it implies that the responsible authorities who fail to prevent IPV can be held accountable by means of domestic laws and that active and early interventions are encompassed in their duties. The inferences of such responsibility in national provisions are practically equivalent with the direct enforcement of human rights norms at a domestic level. Other preventive measures recommended by the guiding document on VAW legislation are the use of education syllabuses to modify attitudes of gender stereotyping and a strong regulation of media laws related to the portrayal of violence against women:

Training journalists and other media personnel on women’s human rights and the root causes of violence against women may influence the way in which the issue is reported and thereby influence societal attitudes.¹⁹

¹⁵ Neave, M., Faulkner, P. and Nicholson, T., 2016. Royal Commission into family violence: summary and recommendations. *Victoria: Victorian Government Printer*, at 38.

¹⁶ *Supra*, note 1, at 14

¹⁷ *id.* at 15

¹⁸ *id.* at 21

¹⁹ *id.* at 30

Awareness raising campaigns and positive relationships campaigns are also significant tools for the promotion of gender equality, both socially and within private relationships. An example would be the American CDC's Dating Matters initiative that targets youth in high-risk populations and enhances public health capacities to "decrease emotional, physical, and sexual dating violence among youth in high-risk urban communities".²⁰ Awareness raising campaigns should target both individuals exposed to IPV and larger communities. Such is the case of Spain's 2017 "There is a way out: Do not allow domestic violence" that encourages people in the vicinity of victims and perpetrators to take charge and assume responsibility by reporting cases of IPV.²¹ The Spanish campaign sends a clear message of shared responsibility for preventing IPV and empowers individuals to actively intervene and stop the phenomenon, encouraging actions that allow the State to learn about IPV cases. Indeed, when the State generates campaigns that promote individual empowerment and encourage the population to disclose and report IPV, authorities are expected to generate solutions and effective protection for the victims. When a State delegates this power into the population and demands collaboration in eradicating IPV, it is paramount to adopt escalation mitigation measures that ensure the readiness of the State to Protect (*second element of due diligence*) the victim.

Most IPV related campaigns such as gender equality campaigns, are operated by NGOs as well as transnational institutions such as UN Women. The UN Women division recently ran the He for She campaign, a gender equality and solidarity international movement with great social media impact.²² The campaign responded to a predominant idea in the IPV discourse: that primary prevention should include or target men and that making men allies in the fight against VAW is essential. It has also been signalled in the scholarship that engaging men is a key aspect of prevention and that combating IPV does not necessarily need to focus on perpetrators.²³ As mentioned earlier, education is often voiced as an important instrument to prevent violence in various societal forms. In relation to IPV, a

²⁰ National Center for Injury Prevention and Control, Division of Violence Prevention, Dating Matters n.d. *Strategies to Promote Healthy Teen Relationships*, viewed January 2018 <https://www.cdc.gov/violenceprevention/datingmatters/index.html>

²¹ Government of Spain, 2017. Ministry of Health, Social Services and Equality. *Hay Salida* [translated from Spanish], viewed January 2018, <http://www.msssi.gob.es/campannas/campanas17/violenciaGeneroHaySalida.htm>

²² UN Women, 2014. *He for She campaign*, viewed January 2014, <http://www.heforshe.org/en/our-mission>

²³ *Supra*, note 13, at 86: "It is clear that work focused on men who batter is an important, but relatively small, part of the developing global effort to address men's violence toward women".

distinction is required between the education of children, the importance of broader social education to lower the risks for IPV and the education of professionals and stakeholders of IPV.

One of the most effective entry points at which discriminatory attitudes regarding gender equality and violence against women can be challenged is the educational system.²⁴

With regard to the education of children for the prevention of IPV, there are a few critical ideas to be considered. First, there is a question of how early in their education should children be introduced to the concepts of equality and violence?²⁵ Second, there is a question of how effective can education against IPV be, if children witness IPV at home? Finally, it is important to note that establishing a link of causation between education programmes in early age and a longitudinal assessment of perpetration later in life, would be very difficult, if not impossible, due to the variety of factors that contribute to IPV. A study on the inter-generational transmission of partner violence suggested that children should be targeted by education interventions before they reach late childhood and adolescence.²⁶ With reference to the second question, the same study seems to agree that focusing solely on children's and youth's behaviours might not achieve effective prevention unless these interventions are coupled with parent-centric activities of encouraging the elimination of unwarranted punishments at home.²⁷ The question of whether IPV is an acquired behaviour based on environmental learning has been debated in the literature and the consensus is that exposure to IPV is likely to have an intergenerational effect:

The single best predictor of children becoming either perpetrators or victims of domestic violence later in life is whether or not they grow up in a home where there is domestic violence.²⁸

²⁴ *Supra*, note 1, at 30

²⁵ See, e.g. Magdol, L., Moffitt, T. E., Caspi, A., & Silva, P. 1998. Developmental antecedents of partner abuse: A prospective-longitudinal study. *Journal of Abnormal Psychology*, 107, pp. 375–389.

²⁶ Ehrensaft, M.K. et al., 2003. Intergenerational Transmission of Partner Violence: A 20-Year Prospective Study. *Journal of Consulting and Clinical Psychology*, 71(4), pp.741–753.

²⁷ *id.*

²⁸ UNICEF, n.d. *Behind Closed Doors, The Impact of Domestic Violence on Children at 7*, viewed January 2018, <https://www.unicef.org/media/files/BehindClosedDoors.pdf>

Accordingly, it appears that the best strategy for combating IPV might be the implementation of education measures that simultaneously target parents and children. While for youth, the focus of the intervention is more likely to be on dismantling gender stereotypes, for adults the programs need to target their understanding of the consequences IPV can have on their lives and that of their children.

In regards to the education of broader groups and larger communities, social networks represent a good opportunity to disseminate new values and change attitudes related to IPV. These networks might include faith communities, sports communities, workplaces and other leisure environments; and local administrations play a key role in engaging individuals in the “development and implementation of community strategies designed to address family violence”.²⁹ Finally, private and public professional groups that might come in contact with IPV need to be identified. These groups, such as teachers or health care providers, must possess relevant knowledge for recognising IPV and conduct a preliminary assessment and refer victims to obtain further protection. For public officials such as judicial professionals, legislation should mandate the “specific training and capacity-building for relevant public officials when new legislation is enacted, to ensure that they are aware of and competent to use their new duties”.³⁰

Prevention, in the sense of hindering the occurrence of IPV, represents perhaps the most challenging aspect of the due diligence framework. Prevention is dependent on time cycles, economic and budget allocations and the willingness of the civil society to be responsive to the change in attitudes that stopping IPV demands. As the due diligence framework will evolve, so will State obligations and it is vital to identify additional evidence-based initiatives that might help combat societal violence and foster gender equality.

2.2 Protect

The second element of the due diligence framework is protection. At this stage, as well as the following stages of IPV, State authorities are gaining knowledge of the abuse that has

²⁹ Neave, M., Faulkner, P. and Nicholson, T., 2016. Royal Commission into family violence: summary and recommendations. *Victoria: Victorian Government Printer*, at 14.

³⁰ *Supra*, note 1

been or is taking place between partners. The obligation of the State is to actively intervene and prevent the escalation or recurrence of violence.³¹ This active intervention that encompasses the elements of Protect, Prosecute, Punish and Provision of Redress constitutes what I described as escalation mitigation. Protection includes various measures that need to be tailored to the needs of the individual; and mitigation is here understood as the alleviation or reduction of individual and relational risk factors across all stages of the interaction between individuals involved in IPV and authorities.

The availability and accessibility of support services is an important protection tool.³² The State machinery of protection needs to encompass services that encourage the reporting of IPV and services that protect certain human rights of the victims and perpetrators of abuse once the reporting has happened. Firstly, services that encourage victim reporting range from national hotlines, integrated service centres, police stations to medical personnel.³³ Medical professionals can either encourage reporting or be subjected to mandatory reporting to the relevant authorities by domestic law, once they have recognized that the patient is a victim of IPV. Mandatory reporting by medical professionals is a sensitive legal concept due to the conflicts it might attract with the right to privacy and the wishes of the victim:

Individuals who seek health care are generally familiar with the concept of physician-patient privilege and expect that the information they have given to their physicians or diagnoses of their problems will not be shared with persons outside the health care delivery system. [...] Of the 61 participants, 60 did not support mandatory reporting by health care providers to the police until a number of system-level changes have occurred.³⁴

The UN recommends that a minimum standard of support services should be mandated by law.³⁵ This minimum standard should consist of: a national hotline, one shelter centre for every 10,000 individuals, one women's counselling service for every 50,000 women and

³¹ *Supra*, note 3, at 31

³² *id.*

³³ *id.*

³⁴ Sullivan, C.M. & Hagen, L.A., 2005. Survivors' Opinions About Mandatory Reporting of Domestic Violence and Sexual Assault by Medical Professionals. *Affilia*, 20(3), pp.346–361.

³⁵ *Supra*, note 1, at 31

access to health care and rape crisis centres.³⁶ It is paramount that these centres are equipped with trained individuals that understand the complexities of IPV.

Assuming that, through the relevant authorities, the State has knowledge of the possible existence of an IPV scenario, moving forward, certain human rights of the victim and perpetrator need to be guaranteed and balanced. The inclusion of the perpetrator's rights in this model of protection is imperative due to the fact that legally, the perpetrator is at this stage, a suspect, not a convicted individual, and should be granted the presumption of innocence. However, in IPV realities, bending the presumption of innocence and arresting the suspect with limited physical evidence may sometimes save a victim's life. For that reason, the procedural rights of a suspect and the human rights of the victim must be very carefully balanced. In regards to the victim's rights, the State has an obligation to protect the right to life; the right to not be subjected to torture or ill-treatment; the right to health; the right to not be discriminated against during the interaction with State authorities; the right to housing; the rights of the children involved and specific intersectional rights related to the victim's vulnerabilities and circumstances. The existence of these State obligations was observed in Chapter III. At this stage, the content of each protection measure needs to be further unpacked. In the context of the right to life and prohibition of torture, States must take immediately, all appropriate measures to guarantee that the victim is not subjected to further violence. The UN recommends that first responding officers take into account the following steps when coming into contact with an IPV situation:³⁷

- (a) quickly separate the parties.
- (b) take steps to ensure the safety of the victim, including any children who may be present.
- (c) assist any party in obtaining medical assistance, if necessary.
- (d) ascertain if language is a barrier and arrange to provide a translator when necessary. Children or family members should not be used as interpreters.
- (e) gather and preserve evidence in accordance with the police service's investigative procedures, which should include making detailed notes of the actions and utterances of the parties and a detailed occurrence report regardless of whether any charges are brought or an offence is alleged.

³⁶ *id.*

³⁷ *Supra*, note 2

- (f) To ensure that any children at the scene are provided with appropriate support/ assistance as required, including referrals to appropriate agencies.
- (g) make detailed notes, including the actions and utterances of all the parties involved.
- (h) conduct detailed interviews with all victims and witnesses.
- (i) assist the victim with a personal safety plan.
- (j) interrogate the offender or alleged offender (at the police station)
- (k) complete a detailed occurrence report for every domestic violence occurrence, regardless of whether any charges are brought, and to enter that information on the police service's information system for future reference.

Additionally, an important measure that must be made available by the law is the protection order:

For protection orders to be issued immediately, the police must respond to and investigate [IPV] promptly, co-ordinate with other agencies and together with prosecutors assess the imminent danger to victims/survivors.³⁸

The protection order must be accessible and granted promptly but above all, it must be effectively enforced. Protection orders are usually issued in situations when pre-trial arrest is not mandated by Courts or alternatively after the pre-trial arrest period has ended. IPV protection or restraining orders can also fail to ensure safety and there are many debates surrounding the ways in which they can be optimised.³⁹ However, the scholarship concludes that generally protection orders are associated with a lowered risk of re-victimisation.⁴⁰ The effective enforcement of protection orders depends on a variety of factors such as risk-assessment and the multiple ways in which police officers make arrest decisions. The UN recommends that States follow a pro-arrest policy in situations where there is sufficient evidence that a crime has occurred, cautioning against police reprimands and warnings:

³⁸ *Supra*, note 3, at 39

³⁹ Benitez, C.T., McNiel, D.E. and Binder, R.L., 2010. Do protection orders protect?, *Journal of the American Academy of Psychiatry and the Law Online*, 38(3), pp.376-385.

⁴⁰ *id.*

Mandatory arrest policies require that a police officer arrest the perpetrator if their assessment of a situation gives them probable cause to believe that a crime has occurred. If such a policy is in place, police may not impose an alternative penalty and the case must be prosecuted without any exception.⁴¹

Pro-arrest policies combined with the criminalization of non-physical abuse might, in theory, lower the risk of re-victimization and escalation of violence. But there is still a strong question of how the suspect's rights should be balanced against a potential risk for deprivations of the right to life and prohibition of ill-treatment. These questions will be addressed later in the chapter, when I will discuss limitations to State due diligence interventions.

Authorities, especially police forces, have various instruments at their disposal to protect victims against further violence. These include pursuing protection orders, referring or escorting women to specialised shelters and conducting risk-assessments in cooperation with the victim for the development of a safety plan.⁴² The way in which State authorities choose to proceed with the protection against possible violations of the right to life and prohibition of ill treatment is significantly dependent upon their deliberation regarding the risk of re-victimization. The degree and depth of the risk-assessment protocol will vary locally and nationally depending on the procedures mandated by law. Some countries or services might follow strict protocols while for others, risk-assessment can be simply an interiorised experience of the State agent.

Various service providers perform family violence (*i.e.* IPV) risk assessments when they come into contact with women, children and families; these include specialist family violence services, mainstream services such as health and family services, and police and justice services.⁴³

For an enhanced protection of victims, official risk-assessment protocols are necessary; and these can be supplemented by self-assessment protocols as well as similar tools for the

⁴¹ *Supra*, note 1, at 37

⁴² *Supra*, note 2, at 73

⁴³ State of Victoria, 2014–16. *Royal Commission into Family Violence: Report and recommendations*, Vol I, Parl. Paper No 132.

assessment of the perpetrator.⁴⁴ Risk-assessment for violations of the right to life and prohibition of ill-treatment needs to include not only the victim but also children; as they can transition from being witnesses to parental violence into becoming victims of IPV. Consequently, risk calculations are difficult and “judgments must consider the who, what, where, when, and how of violence”.⁴⁵ As mentioned earlier in the thesis, risk-factors are variable and reliant on factors such as culture and social environment; and the literature cautions against the sole use of empirical factors and suggests finding a balance between those and professional consensus.⁴⁶ Risk-factors can also evolve during the intervention of State authorities:

[Risk] can fluctuate over time, and it can escalate rapidly. New risk assessments are required whenever circumstances change for victims or perpetrators.⁴⁷

The literature underlines the existence of three major risk-assessment models: unstructured clinical decision making, actuarial decision making, and structured professional judgment.⁴⁸ The unstructured decision making-model refers to the most common way in which risk is evaluated, by professionals that come into contact with victims; and it is based on their experience, discretion and qualifications.⁴⁹ This model is broadly criticised for lacking “reliability, validity, and accountability”.⁵⁰ It has been mentioned earlier in the thesis that discriminatory attitudes towards women by State authorities represents a significant obstacle for victim protection. The unstructured decision model could leave excessive space for exercising stereotypical attitudes when assessing risk and should thus be complemented or replaced by additional empirical models. In General Recommendation 35, the CEDAW Committee clarifies that due diligence obligations to prevent VAW translate into “eliminat[ing] institutional practices and individual conduct and behaviours of public officials that constitute gender-based violence against women or tolerate such violence and which provide a context for lack of or for a negligent response”.

⁴⁴ *id.*

⁴⁵ Kropp, P.R., 2008. Intimate partner violence risk assessment and management. *Violence and victims*, 23(2), pp.202–20.

⁴⁶ *id.*

⁴⁷ *Supra*, note 43

⁴⁸ *Supra*, note 45

⁴⁹ *id.*

⁵⁰ *id.*; see Litwack, T. R. 2001. Actuarial versus clinical assessments of dangerousness. *Psychology, Public Policy, and Law*, 7, pp. 409-443.

The actuarial model is based on attributing risk-factors derived from empirical research a numerical value that will generate a reflection of the possibility for re-offending.⁵¹ This tool can “limit the assessor to a fixed set of factors, which could lead them to ignore other information or potentially minimise factors that professional judgment would identify as critical”.⁵² The effectiveness of this method appears to be highly dependent on the reliability of the data collected to determine risk-factors in a specific group or location; and is most likely suited to assess societal factors rather than relational or individual, which vary significantly. Finally, the structured professional judgement model represents a reconciling approach between the two methods (actuarial and unstructured decision-making) and “does not impose any restrictions for the inclusion, weighting, or combining of risk factors”.⁵³ When using this method, professionals conduct assessments based on empirical evidence and use complementary discretion to gather additional nuanced elements to determine risk.⁵⁴ The structured professional model seems to currently be the most endorsed for practice.

In the most recent General Recommendation 35, the CEDAW Committee explicitly mentioned risk-assessment as part of a comprehensive protection mechanism and advised that all States should implement a “wide range of effective measures and, where appropriate, the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance”.⁵⁵ The Committee also referred to the importance of national coordinated responses such as referral mechanisms as well as safeguarding access to financial aid for women transitioning out of abusive relationships.⁵⁶

Housing rights are also an important element in the protection of victims of IPV. The Handbook for Legislation on Violence against Women recommends that laws “prohibit discrimination in housing against survivors of violence, including by prohibiting landlords from evicting a tenant, or refusing to rent to a prospective tenant, because she is a survivor of violence; and permit a survivor to break her lease without penalty in order to seek new

⁵¹ *Supra*, note 43, Royal Commission.

⁵² *id.*

⁵³ *Supra*, note 45

⁵⁴ *id.*

⁵⁵ United Nations, Committee on the Elimination of Discrimination Against Women, 2017. *General Recommendation 35 on gender-based violence against women, updating general recommendation No. 19.*

⁵⁶ *id.*

housing”.⁵⁷ The lack of a secure accommodation for women and children has been recognized as a major obstacle for leaving abusive relationships:

An abused woman without real access to a legally secured tenure is indirectly forced to stay in an abusive relationship and endure physical and psychological violence. She is forced by the state's laws, or by society's practice, to remain prisoner in her own home or, alternatively, to accept homelessness and its connected risks.⁵⁸

The situation is far more complicated for women who have children with disabilities and/or pets, as most shelters are not equipped to accommodate women with peculiar needs.⁵⁹ Partnerships between animal care services, disability service providers and domestic violence shelters are thus encouraged, to diminish the risks for escalating violence and allow women a safe escape. Co-sheltering is rare, the PALS program in New York being one of the few in the United States, serving “as a model for other domestic violence organizations across the country, so fewer families will be forced to choose between their pet’s safety and their own”.⁶⁰ The European Union lags behind in regards to the development of shelters, with only 8 out of 40 States fulfilling the requirement of having a shelter per 10.000 inhabitants.⁶¹

In many countries, a stronger focus on integrating the fulfilment of economic, cultural and social rights into the State apparatus for protection against IPV is urgently needed. IPV can represent a breach of the right to housing and until recently “a restrictive and androcentric interpretation of the right to housing” hindered the allocation of resources necessary for the development of housing alternatives for individuals subjected to IPV.⁶² As State obligations are progressively recognized as intersectional, the demands of providing protection for all

⁵⁷ *Supra*, note 1, at 33

⁵⁸ Paglione, G., 2006. Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing. *Human Rights Quarterly*, 28(1), pp.120–147.

⁵⁹ Red Rover, n.d. *Bringing Animals from Crisis to Care, Pets and Domestic Violence* viewed March 2018, https://redrover.org/wp-content/uploads/2017/08/RR_Domestic_Violence_Programs_2015.pdf

⁶⁰ Urban Resource Institute n.d. *PALS Program*, viewed March 2018, <http://uriny.org/program/uripals/>

⁶¹ WAVE Coordination Office, 2006. *Training Manual for Improving Quality Services for Victims of Domestic Violence*, Daphne Project JLS/2006/DAP-1/279/WC 30-CE-0117538/00-20, viewed March 2018, <https://ec.europa.eu/justice/grants/results/daphne-toolkit/en/content/improve-%E2%80%93-quality-services-victims-domestic-violence>: “Services for women victims of violence are also lacking in other countries of the EU and wider Europe, with the consequence that women are often unable to leave a violent husband because there is no alternative available to them”.

⁶² *Supra*, note 58

groups will expectantly increase and so will the available services aimed at protecting victims of IPV.

2.3 Prosecute

The third element of the due diligence framework is represented by the obligation of States to investigate and prosecute acts that qualify as IPV.⁶³ Prosecution is an element of escalation mitigation; but additionally, it serves a broader purpose, that of an act of justice conducive to the appropriate and proportional sanctioning of IPV. In a democratic society ruled by the supremacy of the law, acts are sanctioned and prosecuted based on the principle of legality, in accordance with the criminal laws of each country. Therefore, a first note is that acts can only be prosecuted if State laws sanction certain behaviours. For the effective prevention of IPV all abusive manifestations that negatively impact the victim should be sanctioned by the legislator. This includes non-physical IPV such as financial or emotional abuse, if and when a certain threshold of severity of emotional or physical distress occurs. This will be expanded upon in the section dedicated to Punishment. However, there are obstacles to prosecution such as the difficulty of obtaining evidence in non-physical IPV cases and the concept of prosecutorial discretion. This section will try to elucidate how IPV should be prosecuted in a way that compliance with both the rights of the victim and the perpetrator is achieved.

The obligations of States to prosecute IPV entails ensuring access to courts, guarantying that IPV is not automatically referred to alternative dispute resolution programs and ensuring *ex officio* prosecution.⁶⁴ In General Recommendation 35, the CEDAW Committee firmly stated that a failure to prosecute and apply “the appropriate legal or disciplinary sanction” for IPV and gender-based violence constitutes a State omission and thus, a breach of human rights.⁶⁵ The Handbook for Legislation on Violence against Women contains a series of important mentions related to the element of prosecution. It recommends that prosecutors and not victims, bear responsibility for initiating prosecutorial actions and that during all stages of the prosecution, victims should be informed of “their rights; the details of relevant legal proceedings; available services, support mechanisms and protective

⁶³ See, *supra*, note 3 and *supra*, note 55

⁶⁴ *Supra*, note 55

⁶⁵ *id.* para. 23

measures; opportunities for obtaining restitution and compensation [...]; details of events in relation to their case, including specific places and times of hearings; and release of the perpetrator from pre-trial detention or from jail”.⁶⁶ The Handbook takes a different approach to the possibility of mediation in gender-based violence cases and suggests that legislation should prohibit mediation in all cases, consequently in those of IPV.⁶⁷ The same stance is taken by the Istanbul Convention that stipulates that States “shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation [...]”.⁶⁸

In regards to the obligation of ensuring access to justice, it is recommended that legislation provides “free legal aid and court support in all legal proceedings, especially criminal proceedings” as well as access to service centres that provide victims with assistance in the stages of prosecutorial proceedings.⁶⁹ The prosecutorial obligation must align with human rights principles and during the proceedings, it is important that victims’ rights are protected and the confidence in the justice system is fostered. Victims often experience “guilt, frustration, powerlessness, post-traumatic stress, insecurity and fear of rejection and stigma”.⁷⁰ For that reason, legislation should ensure that proceedings are carried out with sensitivity and increased protection of the privacy of the victim.⁷¹ Legislation must also provide victims with the choice of deciding their degree of involvement in the prosecution of the offence and the possibility of “submitting evidence by alternative means” and not confronting the offender in the courtroom.⁷²

In cases of IPV the role of the prosecutor is central for several reasons. In most States, prosecutorial discretion allows the prosecutor to classify abusive acts as minor or serious offences or crimes, deciding the counts and the punishment to be pursued.⁷³ The prosecutor

⁶⁶ *Supra*, note 1, at 36

⁶⁷ *Supra*, note 1, at 38

⁶⁸ *Convention on preventing and combating violence against women and domestic violence*, 2011. Council of Europe, Article 48.

⁶⁹ *Supra*, note 1, at 39

⁷⁰ *Supra*, note 3, at 46

⁷¹ *id.* at 58

⁷² *Supra*, note 1, at 40

⁷³ *Supra*, note 3, at 57

collaborates with the victim in gathering evidence and also has, in most cases, the discretion to drop a case if the victim becomes uncooperative throughout the proceedings.⁷⁴

When the victim cooperates, the odds of prosecution are more than seven times higher than if the victim does not cooperate. In other words, with controls for other relevant factors, victim cooperation is associated independently and positively with the likelihood of prosecution.⁷⁵

To address prosecutorial failures originating in a lack of collaboration, mandatory prosecution can be considered and, as we have seen above it is encouraged by the United Nations. But these recommendations for no-drop prosecution are not without critique, as one author suggests that they strip women of their choices and agency.⁷⁶ Problematic issues might arise from the obligation to prosecute IPV, related to the prosecution of non-physical abusive manifestations. Evidence is usually apparent in physical abuse and the prosecutor can corroborate medical records and testimonies to build the body of proof required for adequate prosecution. Non-physical abuse, on the other hand, may be difficult to prove or difficult to measure. Some States might construct IPV as a crime of outcome, demanding a certain psychological or physical harm for the criminalization of the behaviour.⁷⁷

The Istanbul Convention, for example, follows the same outcome-oriented narrative, demanding that States criminalise acts that “seriously impair a person’s psychological integrity”.⁷⁸ Since psychological harm is difficult to measure and compare to a potential threshold, the prosecution and consequent sanctioning of non-physical IPV will be greatly dependant on prosecutorial and judicial discretion, carried out on a case by case basis. This requires a high degree of familiarity of these institutions with the complexities of IPV,

⁷⁴ Dawson, M. & Dinovitzer, R., 2001. Victim cooperation and the prosecution of domestic violence in a specialized court. *Justice Quarterly*, 18(3), pp.593–622.

⁷⁵ *id.*

⁷⁶ Dayton, J., 2002. The Silencing a Woman's Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases. *Cardozo Women's LJ*, 9, at 281: “*Making strict policies in the name of public safety that leave no room for personal choice puts the individual victim at risk. It is imperative that a woman be empowered to express her choice and have that choice respected*”.

⁷⁷ See European Institute for Gender Equality, 2017. *Glossary of definitions of rape, femicide and intimate partner violence*, EIGE Publications, viewed March 2018, <http://eige.europa.eu/rdc/eige-publications/glossary-definitions-rape-femicide-and-intimate-partner-violence>. *Definitions of intimate partner violence in some European States, such as Romania or Slovakia contain the provision “causes a harm, a physical, psychological or sexual or emotional suffering or a material prejudice” or “causing physical or psychological suffering” which suggest outcomes that might be difficult to prove and measure.*

⁷⁸ *Supra*, note 68, Article 33.

achieved through the instauration of specialised Courts or institutional training. When IPV is sanctioned as a crime of outcome, the prosecution might face difficulties in gathering evidence and might be forced to rely on victim testimonies. This could be discouraging and in jurisdictions that lack mandatory prosecution, this could simply result in a failure to prevent further violence.

In the United Kingdom, the Code for Crown Prosecutors contains guidelines for the prosecution of controlling or coercive behaviour.⁷⁹ This document underlines the different types of evidence that can be introduced to support the prosecution of coercive control (i.e. financial or emotional abuse) ranging from “text messages, the diary of the victim, evidence of isolation such as lack of contact between family and friends, victim withdrawing from activities such as clubs, perpetrator accompanying victim to medical appointments” and “bank records to show financial control”.⁸⁰ In fact, Collins suggests that in the United States, domestic violence is treated differently than other crimes, in that it purports a relaxation of evidentiary practices in prosecutions, which in turn affects the rights of defendants.⁸¹ The author also signals a gap in the scholarship:

Although domestic violence law and policy has generated abundant scholarly attention, the question of whether states do or should enlist evidentiary doctrine to combat domestic violence remains largely undertheorized.⁸²

It remains unclear how non-physical episodes of IPV should be criminalized and if mandatory prosecution is generally effective for the prevention of further violence, without fully understanding evidentiary challenges in IPV cases. From a human rights standpoint, the prosecution of IPV needs to comply with both the rights of the victim and perpetrator. The rights of the victim generally relevant in this stage of the proceedings are the right to life, prohibition of torture and discrimination; while both the victim and the perpetrator should enjoy a fair trial (Article 14 ICCPR, Article 6 ECHR, Article 8 ACHR, Article 7 ACHPR). The act of balancing the human rights of the victim and perpetrator in the

⁷⁹ United Kingdom Government, 2017. *The Crown Prosecution Service Controlling or Coercive Behaviour in an Intimate or Family Relationship*, Legal Guidance, Domestic abuse, viewed March 2018, <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>

⁸⁰ *id.*

⁸¹ Collins, E., 2014. The Evidentiary Rules of Engagement in the War Against Domestic Violence, *New York University Law Review*, viewed March 2018, <https://ssrn.com/abstract=2490698>

⁸² *id.*

prosecution phase of IPV is challenging. One of the most important aspects of a fair trial is related to evidence and how it reflects adversarial proceedings and the equality of arms.⁸³ Collins suggests that “many jurisdictions have manipulated evidence rules to shape the courtroom truth in domestic violence prosecutions to comport with the prevailing preconceptions about the dynamics of domestic violence”.⁸⁴ Although she infers common law evidentiary practices, other States might be in danger of jeopardizing the legitimacy of a perpetrator’s defence or fair trial by lowering the standards of necessary evidence to ensure convictions in IPV cases.

For example, the Spanish Organic Law 1/2004 for the integrated protection measures against gender violence has been criticized for overturning the presumption of innocence and for being “asymmetric and sexist”.⁸⁵ Carrasco and Culebras, presidents of associations dealing with domestic violence in Spain, argue that “the constitutional principle of presumption of innocence becomes, in the case of a man, a presumption of guilt, reversing the burden of proof, forcing the accused to prove his innocence beyond doubt, directly violating several international laws ratified by Spain, which guarantee the presumption of innocence”.⁸⁶ The connection between the presumption of innocence in cases of gender-based violence as well as evidentiary challenges and a fair trial has been additionally signalled by the International Commission of Jurists:

In the context of sexual and gender-based offences, two elements forming part of the right to a fair trial were identified [...] as particularly relevant to accused persons: the presumption of innocence and the rights of the accused to examine witnesses and challenge adverse evidence.⁸⁷

McQuigg also discusses the innate necessity of logically and fairly balancing human rights in cases of domestic violence by indicating “an inherent problem in human rights law that

⁸³ Mole, N. and Harby, C., 2001. *Right to a fair trial: a guide to the implementation of Article 6 of the European Convention on Human Rights*. Directorate General of Human Rights Council of Europe.

⁸⁴ *id.*

⁸⁵ Carrasco, A. and Culebras, M. 2013. *Analysis of the first 8-years of the Spanish law of “gender violence”. 2004 – 2012*, viewed March 2018, <http://justiciadegenero.com/en/analysis-of-8-years-of-gender-violence-law-in-spain/>

⁸⁶ *id.*

⁸⁷ International Commission of Jurists (ICJ), 2015. *Sexual and Gender Based Violence, Fair Trial Rights and the Rights of Victims - Challenges in Using Law and Justice Systems Faced by Women Human Rights Defenders*, ICJ Reflection Paper.

rights will often conflict”.⁸⁸ The balancing act that judges need to perform in cases of IPV is often rapid, without guidance from the international human rights system and in the West, increasingly scrutinised by the media and civil society. McQuigg argues that the rights of perpetrators should simply not be “prioritised” without offering rules or suggestions that would ease the balancing exercise. To right the wrongs of the historical or contemporary burdens of violence against women, many judges and prosecutors might be tempted to prioritise the rights of the woman-victim against the right to a fair trial of the man-defendant. This could be a consequence of what Dempsey describes as “intrinsic value of prosecutorial action”:

Effective prosecution of domestic violence is best understood as prosecutorial action which realises certain kinds of values, specially, values that are relevant to the project of ending domestic violence.⁸⁹

In the context of these societal attitude shifts, we must then wonder: what is the weight of the right to a fair trial if on the shoulders of the defendant might press heavily a patriarchal conjuncture combated through, paradoxically, gender favouritism? Are there ways of achieving justice in IPV cases without instating reverse discrimination and compromising any human right? It appears that there are no right or wrong answers. Instead, we can observe with certainty that the prosecution of IPV carries certain risks and represents a confluence point of gender tensions, human rights, criminology and the meaning of justice. It is in this point of any given case of IPV where one of these elements will have to enjoy a legal privilege. The difficulties that affect prosecutorial acts in IPV should not, however, be interpreted as justifications for deprived compliance with international human rights obligations. In order to prevent IPV, States have an obligation to maximise the knowledge, efficiency and intervention of justice sector actors. The ways in which States achieve this maximisation depends to an extent on the diversity of their legal systems, resources and social and political context.

As a general rule, prosecutors should “ensure that domestic violence cases are treated with the same seriousness as other crimes, conduct rigorous investigations and promote respect

⁸⁸ McQuigg, R.J., 2011. *International human rights law and domestic violence: the effectiveness of international human rights law*. Routledge, at 75.

⁸⁹ Dempsey, M.M., 2007. Toward a Feminist State: What Does ‘Effective’ Prosecution of Domestic Violence Mean? *Modern Law Review*, 70(6), pp.908–935.

for the rule of law”.⁹⁰ Judges, on the other hand, should “interpret and apply the law impartially, which means imposing fair and commensurate sentences, challenge the [gender] stereotypes and bias and provide leadership on improving the function of the justice system and creating a safe environment for victims and witnesses”.⁹¹ Both institutions should be aware that victims of IPV tend to behave differently than victims of other crimes and that convictions are not the most important outcome in an IPV case.⁹² Victim safety should be “at the heart of all domestic violence interventions” and prosecutors and judges should be aware that at times, victims can be uncooperative due to fear of reprisal.⁹³ Victim safety can be ensured through the collaborative creation of a safety plan and continuous risk assessment, tools that have been discussed earlier. These tools entail a constant re-evaluation of circumstances, before and during the trial; and establishing a strong communication between victims and institutions in this procedural phase is essential.

It is recommended to ask victims explicitly whether they have developed a strategy to protect themselves, their children and/or other dependents and family members. Prosecutors should be prepared to offer information and assist the victim to make a personalized safety plan and make referrals to specialised organizations that can provide additional support in this process.⁹⁴

2.4 Punish

The fourth and penultimate element of the due diligence obligation to prevent IPV refers to the obligation of States to proportionally sanction acts that amount to partner abuse. Here, the obligation consists of imposing a proportional legal sanction, of civil, criminal or administrative nature; and is part of escalation mitigation, that is, serves the purpose of lowering the risks of escalating or continuing violence between partners.

⁹⁰ Council of Europe, 2016. *Improving the effectiveness of law-enforcement and justice officers in combating violence against women and domestic violence*, Training of Trainers Manual, viewed March, 2018, <https://rm.coe.int/16807016f3>

⁹¹ id. at 49

⁹² id. at 51: “A more useful measure when dealing with domestic violence, however, could be the extent to which victims feel that the justice system has been responsive to their needs, in terms of safety, support, and information, regardless of whether the perpetrator is convicted”.

⁹³ id. at 55

⁹⁴ id. at 56

There are two key elements of punishment: accountability and sanction.⁹⁵ Legal accountability, in the context of IPV translates into States establishing mechanisms by which “those who commit [intimate partner] violence face its consequences”.⁹⁶ However, the way in which accountability is legally designed is important and needs to comprise all abusive manifestations, not just physical ones. When designing accountability mechanisms, States should not focus solely on the severity of the abuse:

Although relevant, it is not prudent to base decisions on severity of crime solely on the level of injury suffered by victims/survivors [...]. The gravity of some acts [...] such as domestic violence and sexual harassment, turn on their repetitive nature, even if such acts when taken individually may not cause grievous hurt.⁹⁷

Ideally, legal accountability should encompass all abusive acts that impact or have the potential of negatively impacting a victim’s human rights, their safety, dignity, psychological and physical wellbeing and the exercise of economic, social or cultural rights; as well as the rights of children or other members of the family or romantic union. From the point of view of international human rights law, States seem to enjoy a great margin of appreciation related to the acts that should be sanctioned as well as the appropriate nature of the sanction. Neither General Comments and Recommendations of human rights bodies nor other guiding documents refer to which specific acts should be criminalised and when it would be appropriate to substitute a criminal sanction with a civil or administrative one. The Punish element of the due diligence framework, seems to be perhaps, the most neglected.

To guarantee judiciary independence and the rule of law, accountability for IPV should ideally be kept separate from social accountability and community attitudes towards perpetrating IPV. Accountability mechanisms should be constructed to respond to international human rights standards rather than reflect the will of people or social stances of a specific population. However, we cannot deny that social accountability is, in reality, a

⁹⁵ Supra, note 3, at 65

⁹⁶ id.

⁹⁷ id.

powerful force that can both encourage and discourage the prevention and sanction of IPV in a certain community.⁹⁸

The relationship between prevention and punishment can be observed here and it becomes apparent how due diligence elements interact and that adequate punishment depends on the preventive measures previously adopted by the State. For the effective prosecution and punishment of perpetrators, social accountability must exist. Here, I refer to social accountability not as community attitudes towards IPV but to the likelihood that members of the civil society report and actively participate in the prevention of IPV. Social accountability means that individuals believe that IPV perpetrators should be held accountable and they are willing to actively participate to fulfil that mandate. Nevertheless, social accountability and community attitudes differ across countries and again, States enjoy the liberty of choosing how to address these elements.

In relation to the second aspect of Punish, the sanctioning of IPV, States must design sanctions in a goal-oriented way: to prevent recidivism and rehabilitate perpetrators.⁹⁹ Preferably, sanctions reflect the community's disapproval of an act of IPV and reaffirm the authority of the law. However, some communities might remain acceptant of IPV, regardless of the prescribed sanction. The Handbook for Legislation on Violence against Women recommends that laws establish "increasingly severe sanctions for repeated incidents of domestic violence, regardless of the level of injury; and increased sanctions for multiple violations of protection orders".¹⁰⁰ In regards to fines, the Handbook suggests that "fines should not be imposed in cases of domestic violence if doing so would cause financial hardship to the survivor and/or her children; and when fines are imposed, they should be combined with treatment and supervision of the perpetrator through probation".¹⁰¹

⁹⁸ Taylor, C.A. and Sorenson, S.B., 2005. Community-based norms about intimate partner violence: Putting attributions of fault and responsibility into context. *Sex Roles*, 53(7-8), at 573: "Although IPV often escapes detection by formal authorities, it is unlikely to escape detection by family, friends, neighbors, and colleagues. Efforts to shift informal social norms should minimally aim to ensure that the general public, service-providers, and persons responsible for formal sanctioning will provide respectful and even-handed responses to all persons seeking help for IPV as well as aim to raise awareness of challenges victims may face in taking self-protective action".

⁹⁹ *Supra*, note 3, at 66

¹⁰⁰ *Supra*, note 1, at 52

¹⁰¹ *id.*

Incarceration and fines appear to be the most common sanctions against IPV. Concerns have been voiced regarding the necessity of broadening sanctions for partner abuse:

Incarceration may not be the only ‘punishment’ sought or preferred by victims/survivors, especially in cases of [intimate partner violence]. Incarceration may discourage some women from reporting the violence since it would render their partners, possibly the sole breadwinners of the family, unemployed.¹⁰²

Some States have worked to develop perpetrator programmes in partnership with national and local NGOs, although historically, these programmes have received little attention and financing from States.¹⁰³ In Australia, practitioners voice concerns about the use of these programmes as alternatives to criminal justice interventions and there is a lack of consensus on how programmes should be integrated alongside of legal responses.¹⁰⁴ In other countries such as Scotland “the situation is very different. Programmes [...] first emerged within a criminal justice context and worked with criminal justice mandated men only. Even today, there is currently only one long-standing non-criminal justice based programme in Scotland”.¹⁰⁵

In Europe, some programmes employ “mixed cognitive-behavioral, educational, and pro-feminist techniques” but a 2013 review “could not reveal definitive conclusions regarding the effective delivery of domestic violence perpetrator programs” due to the methodological quality of the evaluation.¹⁰⁶ However, transnational networks such as the European Network for the Work with Perpetrators of Domestic Violence have originated, working in multiple States to “increase the potential of perpetrator programmes to prevent and reduce domestic violence against women and children”.¹⁰⁷ Perpetrators programmes should be run by trained specialists who prioritise victims and their needs due to the fact

¹⁰² *Supra*, note 3, at 67

¹⁰³ Vlasis, R., Ridley, S., Green, D. and Chung, D. 2017. *Family and domestic violence perpetrator programs*, Issues paper of current and emerging trends, developments and expectations, Stopping Family Violence.

¹⁰⁴ *id.*

¹⁰⁵ Phillips, R., Kelly, L. and Westmarland, N., 2013. Domestic violence perpetrator programmes: an historical overview.

¹⁰⁶ Akoensi, T.D. et al., 2013. Domestic Violence Perpetrator Programs in Europe, Part II. *International Journal of Offender Therapy and Comparative Criminology*, 57(10), pp.1206–1225.

¹⁰⁷ ENGAGE, n.d. Co-funded by the Rights, Equality and Citizenship Programme of the European Union, viewed March 2018, <https://www.work-with-perpetrators.eu/projects/engage.html>

that participation in the programmes could provide the victim with a “false sense of security”.¹⁰⁸

Perpetrator programmes could represent a good opportunity to address the risk-factors for perpetration discussed in earlier chapters, although this does not seem to be the way in which “success” is being measured. Rather than focusing on facilitating an understanding of the internal motivations for perpetrating IPV and following a risk-based approach, programmes seem to measure outcomes based on factors such as “safety and freedom from violence and abuse for women and children or safe, positive and shared parenting”.¹⁰⁹ Such an approach might be incomplete.

Intervention programs should work on amelioration of proven risk factors (particularly malleable factors) [...] rather than untested or less robust factors, to prevent and reduce IPV. As IPV emerges in dating couples, prevention programs should start early, and both prevention and intervention programs be targeted particularly to the higher-risk ages of the teens and twenties.¹¹⁰

Moreover, perpetrator programmes seem to focus almost exclusively on men and there seems to be a generalised necessity of developing similar responses for abusive women or for those involved in homosexual relationships. It is still debated whether perpetrator programmes “work” and what success means for all stakeholders involved.¹¹¹ Despite these dilemmas, States have an obligation to punish IPV and again, we observe a great margin of appreciation allowed by international human rights law, to decide the content of perpetrator programmes and whether these should be mandated by courts, voluntary, or both. Final remarks related to punishment are those referring to the sentencing of IPV. It is

¹⁰⁸ Hester, M. and Lilley, S.J., 2014. Domestic and Sexual Violence Perpetrator Programmes: Article 16 of the Istanbul Convention—a Collection of Papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence, at 6: “It may influence a victim’s decision to stay with or leave the abuser [...]. As a result, priority consideration must be given to the needs and safety of victims, including their human rights. This type of intervention requires skilled and trained facilitators. Beyond training in psychology and the nature of domestic violence, they need to possess the cultural and linguistic skills that will enable them to work with a wide diversity of men attending such programmes”.

¹⁰⁹ id.

¹¹⁰ Capaldi, D.M., Knoble, N.B., Shortt, J.W. and Kim, H.K., 2012. A systematic review of risk factors for intimate partner violence. *Partner abuse*, 3(2), pp.231-280.

¹¹¹ Westmarland, N., Kelly, L. and Chalder-Mills, J., 2010. What counts as success. *London: Respect*.

recommended that legislation provides penalties “commensurate with the gravity of crimes”.¹¹²

In the moment of punishment, the double nature of human rights reveals itself, both offensively and defensively.¹¹³ Defensively, it guarantees that the perpetrator’s rights are protected during a criminal trial, in the form of presumption of innocence, proportionality and legality of the crime.¹¹⁴ Offensively, criminal law is “called into play to protect human rights” for the victim. To that end, punishment in IPV can take many forms but it must always seek the cessation of violence between partners. Ultimately, the aim of punishment should be the fulfilment of civil, political as well as economic, social and cultural rights of the victim and perpetrator.

2.5 Provision of Redress

The final element of the due diligence framework is represented by the obligation of States, in the aftermath of IPV, to provide victims with reparations. The escalation mitigation phase ends with the punishment of the perpetrator, making room for the victim to interact with the authorities of the State in an exercise of reconstruction. Reparations are a transformative tool that can take many forms, from monetary compensation to access to rehabilitation services.¹¹⁵ The various forms of reparations are defined in the ILC’s Articles of Responsibility of States for Internationally Wrongful Acts (Art. 34-37) to be “restitution, compensation and satisfaction, either singly or in combination”.¹¹⁶ Restitution implies “restoration of liberty, human rights, employment, identity, family life and citizenship, return to place of residence and return of property”.¹¹⁷ Compensation, on the other hand, must be proportional and cover both material, physical and physiological damages; while rehabilitation must provide the victim with access to a wide range of services, legal, social and medical.¹¹⁸

¹¹² *Supra*, note 1, at 52

¹¹³ Tulkens, F., 2011. The paradoxical relationship between criminal law and human rights. *Journal of International Criminal Justice*, 9(3), pp.577-595.

¹¹⁴ *id.*

¹¹⁵ *Supra*, note 3, at 70

¹¹⁶ International Law Commission, 2001. *Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10)*, chp.IV.E.1.

¹¹⁷ *Supra*, note 3, at 70

¹¹⁸ *id.*

The Handbook for Legislation on VAW recommends that domestic law should “provide that sentences in criminal cases may order the payment of compensation and restitution from the perpetrator to the survivor and make provision for the creation of a Government-sponsored compensation programme, which entitles survivors of VAW to apply for and receive a fair amount of compensation”.¹¹⁹ In General Recommendation No. 35, the CEDAW Committee establishes that the obligation for reparation encompasses “legal, social and health services including sexual, reproductive and mental health for a complete recovery” and that the victim’s safety, wishes and needs must be a pivotal point in the design of reparation programmes.¹²⁰ It has been often suggested that the concept of reparations in cases of gender-based violence and implicitly IPV is under-developed:

Courts or bodies with the power to make recommendations [...] frequently formulate their reparations or remedies in broad and vague terms, leaving it on the State to decide on the specific actions it would take in implementing the recommendations. This unfortunately often gives leeway for non-compliance and the implementation of vague measures that do not provide sufficient redress to victims.¹²¹

A few questions emerge. What institutions should provide reparations? What are appropriate reparations for victims of IPV? What principles guide the process of reaching this decision? In regards to the institution that can or should provide reparations, it is suggested that Courts “generally invoke their binding powers to ensure that an awarded remedy is implemented”.¹²² Some States such as the United Kingdom have established a specialised authority mandated to provide reparations, the Criminal Injuries Compensation Authority; although it is unclear whether this particular institution has had a transformative role in the lives of IPV victims.¹²³ In other countries, such as Honduras, national

¹¹⁹ *Supra*, note 1, at 52

¹²⁰ *Supra*, note 55, paras. 46-47

¹²¹ Oxford Pro Bono Publico, 2016. *A Report for Redress (London)*, viewed March 2018, <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2016/01/REDRESS-Project-on-Reparations-and-Remedies-for-SGB-Victims-FINAL-28-January-20166.pdf>

¹²² *id.* at 9

¹²³ United Nations General Assembly, 2015. *Report of the Special Rapporteur on violence against women, its causes and consequences*, Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/29/27/Add.2, para. 103.

mechanisms that enable access to reparations are non-existent.¹²⁴ In Australia, “there is power to order - as a sentencing option - that an offender pay compensation for loss, injury or damage as a consequence of an offence” and additionally, all jurisdictions have established compensation schemes.¹²⁵

It has been noted that in countries where such procedures or schemes exist, they impose bureaucratic or eligibility burdens on the victim, they are under-publicised or inaccessible to marginalised communities.¹²⁶ To comply with the obligation to provide reparations for victims of IPV, States must ensure that compensation schemes exist, that IPV is an eligible harm, that victims have assistance to navigate the process of redress and have access to information regarding these existence of these services. It is important to underline that in the case of *Gonzales et al. v Mexico*, the Inter-American Court of Human Rights made it clear that reparations should not be confused with the social services a State otherwise provides all citizens:

The social services that the State provides to individuals cannot be confused with the reparations to which the victims of human rights violations have a right, based on the specific damage arising from the violation. Hence, the Court will not consider any government support that was not specifically addressed at repairing the lack of prevention, impunity and discrimination that can be attributed to the State in the instant case as part of the reparation that the State alleges to have made.¹²⁷

In the same case, the Inter-American Court also ruled that redress is not considered to be effective if it is conditional upon filing a civil or family lawsuit.¹²⁸

With reference to what might constitute an effective reparation and what guides this decision, the matter of redress is not without its complications. An important note comes from Rashida Manjoo: “in order for reparations to be transformative, they must operate on

¹²⁴ United Nations General Assembly, 2015. *Report of the Special Rapporteur on violence against women, its causes and consequences*, Mission to Honduras, A/HRC/29/27/Add.1, paras. 78-81.

¹²⁵ Australian Government, 2010. Australian Law Reform Commission, *Family Violence: A National Legal Response Final Report*, Vol. I, pp.182-185.

¹²⁶ *Supra*, note 3, at 75

¹²⁷ *González et al. (“Cotton Field”) v. Mexico*. Inter-Am. C.H.R., Judgment of November 16, 2009, at 128-129.

¹²⁸ *id.*

three levels: individual, institutional and structural”.¹²⁹ She suggests that (a) individual reparations should provide victims with legal relief as well as focus on additional family members harmed by acts of violence; (b) institution should be better equipped to administrate the transformative powers of redress and (c) structurally, the *status quo* needs to change, making it harder for violence to remerge for the same or other individuals.¹³⁰

Manjoo also advocates for drawing a clear line between compensation and reparations, suggesting that compensation, while important, is rarely sufficient.¹³¹ It has been suggested that compensation, especially in monetary form, is hard to calculate and rarely satisfactory for victims.¹³² Reparations should target the victim and the community, not only restoring but altering societal realities and thus reinstating confidence in the legal system. It has been mentioned throughout the first chapters that IPV occurs due to specific individual risk-factors manifesting in the victim, such as economic dependency, low levels of education, young age, prior experience with violence or alcohol abuse. In order for reparations to be effective, these factors must be diminished or eliminated. As Manjoo suggested, it is not enough for victims to return to the same state of affairs as prior to the abuse. This would imply that victims could remain susceptible to the same occurrence but perhaps, with a different partner. This is why reparations must be connected to survivor empowerment and must target the initial disempowering factors (risk-factors).

The obligation of States in relation to victims of IPV should not end with reparations but continue as they transition into a position of *survivors* and develop the capacity to respond to disempowerment. Education for victims and their children should be considered as a central element of empowerment:

Policies for improving access to education for victims and/or their children have been ordered or implemented after finding that violations had resulted in serious obstacles to victims’ continuing their education or providing education for their dependents. Such policies and decisions are based on the

¹²⁹ Manjoo, R., 2017. Introduction: reflections on the concept and implementation of transformative reparations, *The International Journal of Human Rights*, 21:9, pp.1193-1203.

¹³⁰ *id.*

¹³¹ *id.*

¹³² Correa, C. 2017. *Getting to Full Restitution Guidelines for Court-Ordered Reparations in Cases Involving Sexual Violence Committed during Armed Conflict, Political Violence, or State Repression*, ICTJ.

understanding that for many victims what they resent the most is not being able to provide a better future for their children.¹³³

Career counselling and education could lower the risks for further economic dependency, especially if combined with monetary compensation schemes. For victims struggling with psychological or medical risk-factors such as depression, anxiety or alcohol abuse, empowerment strategies should be centred at enabling survivors to identify and overcome these conditions. Survivor empowerment in IPV is a dynamic and individual process.¹³⁴

The element of redress is also likely to develop over time, as will other elements that constitute the human rights due diligence framework. However, States currently have at their disposition sufficient tools deriving from the 5 Ps to construct a human rights-based approach to prevent IPV. Traditional methods focusing solely on criminal interventions and enhancing punishments for IPV have proven to be ineffective, as have the uncoordinated and perhaps chaotic responses to victims' protection. As Sarkin recently suggested, an increased pressure from the IHRL system on States to report their adherence to the due diligence framework is desirable and might be the necessary push to stimulate successful compliance with this set of human rights obligations.¹³⁵

3. Due diligence procedures in the context of intimate partner violence

In the previous section, the content of the 5 Ps that constitute the due diligence framework for preventing IPV, were examined. Given the plurality of legal systems and the different ways in which States can accommodate human rights practices and consequently, implement a diligent State conduct, it is important to elucidate the procedural elements of due diligence. Due diligence procedures have been mainly discussed in the field of business and human rights, where historically the concept of due diligence has had a bigger impact

¹³³ *id.*

¹³⁴ Cattaneo, L.B. and Goodman, L.A., 2015. What is empowerment anyway? A model for domestic violence practice, research, and evaluation. *Psychology of Violence*, 5(1), at 84: “*The process of empowerment involves thinking through possibilities and selecting the best option based on the unique circumstances each survivor faces at any given time. It also often involves revisiting goals and subgoals, as context and other components of the process shift*”.

¹³⁵ *Supra*, note 10

and has enjoyed greater attention.¹³⁶ Following the business model, there are 3 core procedural elements that have been commonly suggested to be integrative of diligent conduct: (a) the identification of actual and potential impacts; (b) preventing and mitigating impacts and (c) accountability for impacts and responses to them.¹³⁷ These procedures sum up the main steps States must take for acting diligently to “create a culture of prevention” and are integrated into legislative and regulatory regimes.¹³⁸ The 3 procedural rules can be applied in the area of IPV and accompany the 5 Ps; and to that end, this section will briefly clarify how due diligence can be designed as step by step operational regulatory model.

The first procedural aspects consist of identifying actual or potential impacts. In regards to IPV, this means identifying the national risk-factors that a specific population might experience and identifying the individuals that might be affected by a majority or a combination of risk-factors. Due diligence is a process in which risk identification and risk control are fundamental.¹³⁹ The socio-ecological framework can be very useful to determine multiple levels of risk. This is done by “assign(ing) investigative responsibility within its organization to specific individuals or units, committing resources to the tasks of detection and investigation and ensuring that the people responsible for investigation have access to the levels of the organization where decisions are made”.¹⁴⁰ Indeed it is recommended that States create institutions mandated with an operational surveillance of IPV, through research and statistical data gathering. By identifying the groups and individuals at risk, States make it easier to target and deliver preventive programmes to the communities that most need them, using a demographical and risk-centred approach. Examples of such institutions are the Spanish Institute for Women and Equal Opportunities (IMIO), the Swedish National Centre for Knowledge on Men's Violence Against Women (NCK) or the United States Office on Violence Against Women (OVW).¹⁴¹ However, the simple establishment of these institutions is not enough. Resources must be allocated by

¹³⁶ De Schutter, O. et. al, 2012. *Human Rights Due Diligence: The Role of States*, viewed March 2018, <http://corporatejustice.org/hrdd-role-of-states-3-dec-2012.pdf>

¹³⁷ *id.* at 55

¹³⁸ *id.*

¹³⁹ Taylor, M. B., Zandvliet L., and Forouhar. M. 2009. *Due Diligence for Human Rights: A Risk-Based Approach*. Corporate Social Responsibility Initiative Working Paper No. 53. John F. Kennedy School of Government, Harvard University.

¹⁴⁰ *id.*

¹⁴¹ See IMIO, <http://www.inmujer.gob.es/elInstituto/conocenos/home.htm> ; NCK, <http://nck.uu.se/en/about-nck> ; OVW, <https://www.justice.gov/ovw/about-office> [All sources viewed April 2018]

the State towards these agencies and the legislative framework should empower institutions to promote a human rights due diligence approach.

An absence of state resources, or a shortage of resources, should not be an excuse for a state from taking at least some measure to ensure compliance with its obligations. When this is claimed, a true assessment needs to occur against what resources are used for other state activities. Even in times of austerity, states cannot escape their obligations.¹⁴²

In Chapter II, it was emphasised that in many States the phenomenon of IPV is still poorly understood and that often prevalence rates do not consider factors other than gender, age and basic demographics. Little is known about the socio-economic background of victims or perpetrators, their education, their mental health or other human rights falling short and acting as risk-factors. The literature also reveals that motivations for perpetrating IPV are hard to grasp or that IPV can vary across territories, traditions, minorities or cultures.

These key variables remain poorly understood. Despite many efforts, most States cannot understand or predict why some individuals are influenced by societal risk factors such as patriarchy and others are not; why an individual is abusive towards their current partner but not their next or what IPV means for children, how and why they experience it, if and when they learn it or if this behaviour can be modified before transitioning into adulthood. These unresolved issues often originate from a lack of compliance with the most important element of due diligence: the identification of risks and potential impacts.

Human rights and risk are different concepts, with different pedigrees, but in practice they work well together. Human rights are universal freedoms and protections for human beings provided under international law and enshrined in several international covenants. As such human rights are normative standards for the dignified treatment of people by states and other organs of society, in other words a universally accepted standard of care. Risk is a functional concept applied across a range of disciplines, [...], which seeks to identify and mitigate a threat, or the potential for harm or damage. Therefore, human rights

¹⁴² *Supra*, note 10

risk can be understood as harm to people, or the potential for harm to people, where that harm constitutes a violation of internationally proclaimed human rights.¹⁴³

States cannot simply limit themselves to view due diligence as a response to disclosed or reported cases of IPV. They must actively seek to prevent it from ever originating. Without a proper anticipative prevention, investigation and analysis of potential human rights impacts, the effectiveness of allocated resources for the prevention of IPV can be traced back, at best, to good fortune rather than programmed outcome.

The second due diligence procedure is represented by preventing and mitigating impacts. In the context of IPV, this translates into responding to the constellation of risk-factors that have been identified previously. In IPV cases, this escalation mitigation is comprised by the active intervention of State authorities that gain knowledge of IPV to stop it from escalating; as well as the general measures adopted by the State to promote a social climate where IPV is not tolerated. The content of these measures has been discussed earlier in the examination of the 5 Ps.

An additional element of preventing and mitigating impact is “inform(ing) affected stakeholders of identified risks”.¹⁴⁴ In order to identify the primary stakeholders in IPV (i.e. any person that may be affected by IPV) the first step must be completed: revealing the population at risk. Once the stakeholders have been identified, they must be informed of the risks that IPV carries, for themselves, their children and their communities. As communities, we are all secondary stakeholders in IPV but few awareness campaigns inform the population about the impacts IPV might have on their lives, the lives of their friends or colleagues or about how to identify risk in themselves and others and engage authorities into mitigating that risk.¹⁴⁵

States must promote an understanding of how human rights are endangered in IPV and individuals must be made aware of the costs it bears on communities. The State can and

¹⁴³ *Supra*, note 137, at 5

¹⁴⁴ *Supra* note 133, at 57

¹⁴⁵ *Supra*, note 10, at 36: “Knowledge and appreciation is needed by the community on these matters to have an effect on the situation. Both potential perpetrators and victims need to know about the laws and appreciate their importance and centrality to the state’s willingness to deal with and eradicate violence against woman [i.e IPV] in all its forms”.

should rely on all individuals in combating IPV, but the State bears the responsibility of communicating how and why everyone is needed in the fight to eradicate it. If criminal laws are responsible for telling society that IPV is *wrong* and that wrong is sanctioned, States must go beyond this narrative and inform society *why it is wrong* and what harms IPV entails. Due diligence demands, collaboration, information and acknowledging a shared responsibility.

Finally, due diligence processes imply accountability for harm. This accountability is both national and transnational. National accountability mechanisms are those that hold individuals accountable for their violations of human rights, and one form of achieving that is through Punishment. It has been reiterated that “impunity is one of the biggest problems with violence against women” and consequently IPV, and that States have an obligation to investigate and punish IPV.¹⁴⁶ But accountability should also provide for the possibility of individuals to hold State authorities accountable, internally, for due diligence failures at a local level. This element of accountability is often neglected. In other words, international human rights standards related to IPV need to be better enforced at a domestic level. When providing redress for IPV, States must ensure that individuals can hold accountable institutions that have failed to advise and protect them, that have discriminated them, that States can be held accountable for not providing shelters or a place of refuge for victims. If States fail to accommodate these measures of accountability, their efforts to prevent IPV can otherwise be considered illusory and so, the due diligence framework could be ineffective.

4. Limitations to due diligence obligations: State interference and State intervention

Throughout the thesis, it has been accentuated that States are expected to *intervene* in situations of IPV, and prevent its escalation or even adopt measures that will ensure that IPV does not originate in a particular community or society. Due diligence obligations require precisely that: an active State *intervention* aimed at mitigating the intensification of violence, and preventing present and future abuses. At the same time, it has been underlined that States have negative human rights obligation, to not *interfere* in the enjoyment of a particular human right and abstain from any action that might interfere with an individual’s rights, unless the situation is exceptional and such exception is rendered

¹⁴⁶ *Supra* note 10, at 35

permissible by international law. These two concepts raise a number of questions. First, what is the difference between a State intervention and a State interference in the context of IPV? This discussion is guided by the norms and jurisprudence developed by the European Convention and Court of Human Rights that have repeatedly examined the boundaries of private life. The definition of a State interference can be found precisely in the formulation of certain rights, as it is the case of Article 8 of the European Convention on Human Rights that refers to the right to private and family life:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.¹⁴⁷

Although “the primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence” it does not exclude a positive obligation for States to adopt measures that guarantee that private individuals respect each other’s right to family and private life.¹⁴⁸ In the case of IPV, this means that States must protect individuals’ right to private and family life and at the same time, not interfere with their enjoyment of such freedoms, unless that interference falls under the exceptions formulated by Article 8. Assessing how States can intervene without interfering in private and family life, in the context of IPV, can be difficult. For example, it was mentioned in Chapter II that in Australia, unauthorised surveillance (known as snooping, *i.e* reading a person’s SMS messages or monitoring a person’s email account or internet browser history) is defined as domestic violence and is sanctioned by the legislator accordingly.¹⁴⁹ In this case, the State intervenes by adopting a measure (*legislation*) to prevent individuals from breaching each other’s privacy rights and exercise coercive control, one over the other. The State is intervening by means of legislation to prevent and sanction IPV. At the same time, we can argue that an individual has the right to share information and negotiate

¹⁴⁷ *Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950. Council of Europe, Article 8.

¹⁴⁸ European Court of Human Rights, 2017. *Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life*, prepared by the Directorate of the Jurisconsult.

¹⁴⁹ See *The Domestic and Family Violence Protection Act of 2012* (QLD) Section 8(2)(5).

the boundaries of privacy within their own relationship. This is where the difficulty arises, at the boundaries between rights. The ECtHR has developed a robust jurisprudence on Article 8 which is understood to contain various situations and is applicable to both married and non-married couples.¹⁵⁰

It could be then argued that the State is actually *interfering*, at the time of sanctioning a snooping act that an individual can consent to. This consent is an expression of exercising autonomy in a relationship. But is that interference justified and allowed by human rights laws? Again, we must examine the jurisprudence of the ECtHR, the human rights body which has offered most guidance in these matters. The European Convention on Human Rights allows State interfaces that are prescribed by the law and necessary for public safety.¹⁵¹ If State measures aimed at “avoiding crime”, are prescribed by national law and are necessary, in the sense that they are proportional and respond to a pressing social need, they can be considered legitimate interferences.¹⁵²

The more important the rights in the scheme of the Convention are, the more convincing the reasons required to justify a restriction in them will be.¹⁵³

There is no doubt that addressing IPV is increasingly becoming a pressing social need, as demonstrated by the unshaken prevalence of IPV against women worldwide, as well the interest in the subject shown by human rights bodies, States, the media and communities. It is unclear whether in the particular situation of unauthorised surveillance for example, the State could justify the legitimacy of an interference, due to the fact that the limits of the right to private and family life are commonly assessed on a case by case basis. However, it is clear that balancing the rights of individuals, their autonomy and freedom with the need to combat IPV could in some cases become problematic, from a human rights point of view. The need for differentiation between State interference and intervention can, additionally, become relevant in a multitude of other scenarios.

¹⁵⁰ Council of Europe, 2012. *Protecting the right to respect for private and family life under the European Convention on Human Rights*, prepared by Ivana Roagna: “The notion of private life has been applied to a variety of situations, including bearing a name, the protection of one’s image or reputation, awareness of family origins, physical and moral integrity, sexual and social identity, sexual life and orientation”.

¹⁵¹ *id.* at 40-45

¹⁵² *id.*

¹⁵³ *id.*

We can consider a hypothetical case of IPV in which witnesses, be that close family, friends, or bystanders request the intervention of authorities for the protection of the victim, and the victim refuses to collaborate, choosing to stay in the relationship and refusing to pursue charges. Should the State intervene to investigate and prosecute acts of IPV against the wishes of the victim and would that constitute an interference? In the everyday reality of courts dealing with IPV cases, it is an accepted truth that a case will not advance without the support of the victim. For that reason, the State can only intervene to prevent IPV, to the extent that the victim allows it to. But policies such as no-drop prosecutorial duty in IPV are unlikely to be considered interferences as long as they fulfil the necessary requirements set out in Article 8 of the ECtHR, most importantly, the interference must be legally prescribed. The State enjoys the freedom of designing interventions to prosecute and punish IPV but cannot impose the termination or continuation of a romantic relationship.

It is a fair assumption that in cases of adult IPV, the thresholds required for justifying a State's interference should be higher than in those concerning adolescents, *i.e.* teen dating violence. Commonly, children have a limited legal capacity and autonomy prescribed by national law which could affect the boundaries of their right to private and family life and relax the standards of justification for State interference aimed at protecting their safety in cases of IPV, whether as victims or witnesses:

The State also has a positive responsibility to protect children from witnessing domestic violence in their homes (*Eremia v. the Republic of Moldova*). The Court will also apply its child custody and care jurisprudence [...] with particular deference to removal decisions based on patterns of domestic violence in the home (*Y.C. v. the United Kingdom*).¹⁵⁴

It was mentioned earlier that States also have positive obligations related to the right to private and family life, that encompasses any justified measure aimed at ensuring that individuals enjoy various freedoms. In regards to IPV, the ECtHR has been firm to establish positive obligations:

¹⁵⁴ European Court of Human Rights, 2017. *Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life*, prepared by the Directorate of the Jurisconsult. See *infra*: *Eremia v. The Republic of Moldova*, Appl. no. 3564/11, Judgement 28 May 2013. *Y.C v. The United Kingdom*, Appl. no. 4547/10, Judgement 13 March 2012.

The Court has long held that the State has an affirmative responsibility to protect individuals from violence by third parties. This has been particularly true in cases involving children and victims of domestic violence. [...] Article 8 is also applied because violence threatens bodily integrity and the right to a private life. In particular, under Article 8 the States have a duty to protect the physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.¹⁵⁵

The ECtHR has put forward that the positive obligation of States is binary: “to give legal recognition to family ties; the second is to act to preserve family life”.¹⁵⁶ Another important question resurfaces: aside from preventing IPV, should State interventions in IPV be aimed at preserving or terminating a violent relationship? Is the aim of preserving a relationship compatible with the prevention of future violence in IPV cases? Which State conduct, of terminating or preserving a relationship, is most compatible with human rights standards?

In regards to the preservation of family life, the ECtHR has not discussed this aspect in the context of IPV; but instead, this issue was predominantly examined in cases concerning a child’s separation from the parents.¹⁵⁷ But the inquiry on the role of the State in preserving family life is not novel in the sphere of sociology, although vastly ignored in the field of human rights. In 1994, Zimmerman highlighted the relationship between social welfare support and the preservation of family in the USA and noted: “family and social integration are two sides of the same coin, that family life is more stable in States that do more to support individuals and families in the face of destabilizing influences”.¹⁵⁸ Family preservation was also introduced in the context of children’s welfare programmes and the model was regarded positively.¹⁵⁹

¹⁵⁵ European Court of Human Rights, 2017. *Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life*, prepared by the Directorate of the Jurisconsult. See *infra* Janković v. Croatia, Appl. no. 38478/05, Judgement 5 March 2009.

¹⁵⁶ *Supra*, note 148, at 68

¹⁵⁷ *id.* at 70-72

¹⁵⁸ Zimmerman, S.L., 1994. The role of the state in family life: States' AFDC payments and divorce rates in the United States. *International Journal of Sociology and Social Policy*, 14(1/2), pp.4–28.

¹⁵⁹ Kelly, S. & Blythe, B.J., 2000. Family preservation: a potential not yet realized. *Child welfare*, 79(1), pp.29–42: “Family preservation can provide safe alternatives for some families in an effective and respectful

Since then, others have agreed that the State must “provide a certain level of material conditions in order to preserve family life”.¹⁶⁰ Most of the ideas in family preservation are centred around the role of the State to provide economic and social support for families or to intervene and protect children while strengthening the capabilities of parents to provide safe spaces for children. On one hand, State measures aimed at fulfilling economic, social and cultural rights could lower the individual and relational risk factors associated with IPV, and decrease marital conflicts and economic stress and dependency within couples. But family preservation in the sense of *relationship preservation* in IPV does not appear to have been largely discussed. However, one author signals the issue women face:

Remedies for domestic violence too often protect a woman’s right to safety only if she is willing to leave her partner, thereby sacrificing her right of autonomy as expressed through her decision to stay in an intimate relationship. [...] The legal system must confront the tension between legal rules that assume that the only solution to domestic violence is to dissolve the relationship and the wishes of many battered women to maintain the relationship in a non-abusive form.¹⁶¹

In that sense, perhaps the biggest challenge of due diligence compliance in IPV is reconciling two competing State interests: (a) the interest of the State in respecting an individual’s right to autonomy and self-determination in their private life and (b) the interest of the State to protect an individual from the possible consequences of exercising that autonomy and consequently act in the name of public safety. This conundrum is also reflected in the public-private divide that has characterized IPV for a long time, namely, the reluctance of public authorities to intrude in what has been considered a private, family issue. And due diligence obligations seem to have put an end to this traditional divide, despite the fact that the ideological public-private divide can still persist in the minds of individuals that form communities and societies. As per the law, however, recent

manner. [...] We need to provide much more effective front-end services to those families who, with some assistance, will be able to take control of their own lives and develop their own solutions. Family preservation offers that possibility”.

¹⁶⁰ Pascual, M.G. and Pérez, A.T. eds., 2016. *The Right to Family Life in the European Union*. Taylor & Francis, at 7.

¹⁶¹ Goldfarb, S.F., 2007. Reconceiving civil protection orders for domestic violence: Can law help end the abuse without ending the relationship. *Cardozo L. Rev.*, 29, at 1487.

developments along with the work presented here clearly suggest that IPV is a public issue. Nonetheless, the publicity of IPV does not exclude the possibility of some elements, related to romantic relationships, to retain a private character.

In order for the State to provide a holistic protection of human rights, in the case of IPV, the conduct of authorities must aim to prevent violence while being guided by the wishes and choices of the victim. For some, this means that measures can be restrictive, such as the referral to and adoption of a no-contact protection order. For others, they should have the possibility of engaging the State's due diligence and participate in the prosecution and punishment of IPV, while maintain contact with the perpetrator and exercising autonomy to continue the relationship. One author suggests that the law should provide for the possibility of various forms of protection orders.¹⁶²

The option of obtaining a protection order that authorizes an ongoing relationship between the parties but sets limits on the abuser's behavior provides a valuable alternative.¹⁶³

Making State measures that impose flexible limitations available, means utilizing the power of the law for "improving relationships rather than ending them".¹⁶⁴ The conduct of the State, should not be, in fact, directed at ending the relationship for various reasons: first and foremost, due to the fact that it might interfere with an individual's autonomy and secondly, because ending the relationship does not guarantee the absence of recidivism. If the State aims to solely exercise the power of criminal justice in a case of IPV and separate the individuals involved, all it can achieve, at best, is the absence of violence between *that victim* and *that perpetrator*. This does not guarantee however, that the victim will not be re-victimized by another individual or that the perpetrator will not initiate another relationship where he/she will manifest abusively. At the same time, the State cannot promote the continuation of a violent relationship through its actions or lack of intervention. Neither State conducts are completely compatible with due diligence due to the fact that the State has no right or legal justification for making one choice or the other in the first place. In fact, if and when the State makes that choice, either directly or indirectly for individuals, it gets distracted from its actual purpose.

¹⁶² *id.*

¹⁶³ *id.* at 1523

¹⁶⁴ *id.* at 1502

Much has been said about the social, economic and cultural rights and circumstances that influence IPV. From the very beginning, the thesis has emphasised the fact that IPV takes place for a multitude of reasons and that due diligence interventions should be aimed at lowering those risk-factors, at changing the circumstances, attitudes, behaviours of individuals. The State cannot simply intervene to punish the perpetrator and leave individuals in the same circumstances that contributed to the experience of violence, ignoring the fact that incomplete State interventions are unsustainable. Earlier, I have discussed that Reparations for IPV need to be transformative but this transformative power should extend to the whole due diligence framework and additionally, should target perpetrators.¹⁶⁵ The 5 Ps tell the story of *what* States should do but often, the aim of the due diligence framework is overlooked. For the reasons presented here, State interventions in IPV must always target the transformation of risk factors into protective factors; and all the while, States must clearly differentiate between (a) their obligations to prevent IPV in a certain relationship and (b) their obligation to respect individuals' autonomy and private life.

In Chapter II, individual risk factors frequently associated with IPV were identified and include: young age, heavy drinking, depression, personality disorders, low academic achievements, low income, witnessing or experiencing violence as a child.¹⁶⁶ If the State limits its intervention to the mere pursuit of justice, to solely punish the perpetrator and guarantee that violence does not escalate, these factors might remain unchanged. However, if in the process of providing reparations, the State takes a transformative approach, through education programmes, mental health programmes, conflict resolution initiatives and the inclusion of adolescents in the targeted groups, these factors can be eliminated. This could require the centralization of State efforts and the creation of a specialised institution that has the resources and capacity to act holistically. Because IPV is a complex phenomenon with multiple factors, addressing these factors might require the intervention of various State authorities, such as doctors, police officers, therapists, social workers, prosecutors, judges, etc. The thesis has portrayed how certain State interventions are

¹⁶⁵ European Institute of Gender Equality, 2015. *Preventing domestic violence, Good practices*, viewed April 2018, http://eige.europa.eu/sites/default/files/documents/MH0114678ENN_WEB.PDF “*Working with the perpetrators of domestic violence pays big dividends: correctly done, it can lead to real changes in behaviour, and not only reduce the level of violence but also save public money in the long run*”.

¹⁶⁶ *Supra*, Chapter II, at 40

realised by a specialised State actor; but it also stressed the importance of coordinating State interventions. In some States, this might imply a drastic restructuring of the response to IPV, by creating a model of multi-agency response. For other States, this means improving the multi-agency collaboration system by focusing on the importance of information sharing.¹⁶⁷

States retain discretion to design the roles and competencies of State institutions in preventing IPV. But two important aspects must be considered. First, the collaboration between State actors in creating a risk profile or in the risk-assessment process, followed by the centralisation of that information.¹⁶⁸ On different occasions, practitioners and stakeholders involved in IPV have voiced the need for better collaboration and better implementation of preventative policies. The mere establishment of formalities, the creation of institutions, the sanctioning of IPV or the promulgation of specialised IPV laws do not seem to create a considerable impact on prevalence. Often, State interventions are formally laid out, they exist but they are not effective and laws are not converted into action.¹⁶⁹

State interventions incorporating all actions of State actors aimed at combating IPV, must then be balanced, transformative, collaborative and effective. A successful State intervention across all levels of due diligence is (a) a balancing act to ensure that the State does not interfere with the rights of individuals is needed (b) while targeting the risk factors for IPV and using the power of the law to create protective factors, (c) through collaboration with specialised institutions according to the needs of the victim, (d) to

¹⁶⁷ National Institute for Health and Care Excellence, 2014. *Domestic violence and abuse: multiagency working*, viewed April 2018, <https://www.nice.org.uk/guidance/ph50>: “Adapt clear protocols and methods for sharing information, both within and between agencies, about people at risk of, experiencing, or perpetrating domestic violence and abuse. Clearly define the range of information that can be shared and with whom (this includes sharing information with health or children’s services on a perpetrator’s criminal history)”.

¹⁶⁸ Su Lin Han, 2017. *China’s new domestic violence law: keeping victims out of harm’s way?*, Working paper. Yale Law School, Paul Tsai China Centre: “A centralized platform to collect, analyze, and share domestic violence case information among police, courts, and social service agencies can help direct targeted legal and service responses based on the risk profiles of individual victims”.

¹⁶⁹ Mandeep K. O’Brien, 2013. Speech at UNFPA Representative a.i. in Viet Nam at the consultative workshop on multi-sectoral coordination mechanism and the minimum intervention package for domestic violence prevention and control, transcript: “It is important to have greater synergy and coordination among all relevant sectors and stakeholders working to prevent and address domestic violence. Such a coordinated multi-sectoral response to domestic violence must be well planned and monitored. This will help to translate the national laws and legislation into actions”.

guarantee the change of attitudes, behaviours and circumstances that have surrounded the emergence of IPV.

This chapter has analysed the content of the 5 Ps that form the due diligence framework and highlighted multiple ways in which States can comply with IPV-related human rights obligations. The chapter emphasizes the difference between anticipative prevention and escalation mitigation and explains what these two stages of prevention require from State authorities, in order to stop abuses from escalating. In short, the chapter argues that risk-assessment must be a central element of due diligence and that State interventions must be transformative, changing risk-factors associated with victimization and perpetration into protective factors. The chapter also warns against State interferences and argues that individuals should retain autonomy to decide whether to continue or end a relationship. As a concluding chapter, it fulfils the objectives of the study and analytically, it contributes to the elaboration of a clear due diligence framework for IPV, discussing concrete positive measures that States can adopt and implement. In the next and final chapter, recommendations are made and a thesis summary is presented.

Chapter VII: Conclusion and recommendations for compliance with the due diligence framework for preventing intimate partner violence

1. Introduction
2. Recommendations for compliance with due diligence obligations to prevent IPV
3. Thesis summary
4. Concluding remarks

1. Introduction

This concluding chapter is dedicated to a final discussion in which I consider the normative content of the due diligence framework, its implications for IPV and the innovative elements discussed throughout the thesis. The grand majority of the thesis has presented the normative content of due diligence as it appears in international law, as *lex lata*, discussing the law *as it is*. Here, I will also remark *lex feranda* implications and discuss what the law *should be* in relation to IPV, both at an international and national level, to ensure protection against IPV or TDV.

The recommendations made in this chapter are of diverse nature: research, legislative, judicial or policy recommendations. They relate both to best practices put forward in the literature for the prevention of IPV, as well as my personal contribution to the field, as a result of the work presented in the thesis. Recommendations cover measures for anticipative prevention as well as escalation mitigation; and will reference civil, political, economic, social and cultural rights. The suggestions presented here strive to be intersectional and refer to adult IPV, children exposed to IPV and IPV in the LGBTQ community or for people with disabilities; and cover novel implications such as IPV in a digital era and the importance of actualization in due diligence. Recommendations also strive to be universal, in the sense that all States can follow these suggestions, based on human rights principles and in accordance with the limitations due diligence purports. The discussion will cover not only aspects related to human rights law but important observations related to IPV as an occurrence. Throughout the recommendation part of this chapter, I will review the most important ideas discussed in the thesis, followed by a thesis summary and a conclusion.

2. Recommendations for compliance with due diligence obligations to prevent IPV

Consistent terminology

Intimate partner violence should be consolidated as an independent concept and should be used consistently across the literature, legislation and by practitioners. While carrying out the present research, a tendency at a national level to equate IPV with domestic violence or family violence has been observed. At an international level, IPV is usually referred to as violence against women, due in part, as I have explained, to the historical developments that led to the adoption of the CEDAW and the DEVAW.

The language in the violence against women discourse is highly sensitive. Variations in terminology can greatly shape and influence how research partners analyze and discuss their findings and how target audiences conceptualize the issues.¹

Three linguistic tools have been identified as relevant for drafting legislation: precision, clarity and unambiguity.² Precision, in this case, is under scrutiny, as umbrella terms such as domestic violence or VAW seem to refer to multiple situations beyond IPV, potentially perpetrated by other actors than partners and in the case of VAW, rooted only in the gendered nature of violence.³ The element of gender creates, at the same time, further confusion and disambiguation, as some consider, for example, the recruitment of young boys in conflict as a form of gender-violence; and it is unclear where we can draw the inclusiveness line and how these terms can serve both genders in a human rights or humanitarian context.⁴ The use of

¹ Partners for Prevention, n.d. *Replicating the UN Multi-country study on men and violence: understanding why some men use violence against women and how to prevent it*. A UNDPF, UNFPA and UNV Regional Joint Programme for Gender Based Violence Prevention in Asia and the Pacific, viewed April 2018, http://www.partners4prevention.org/sites/default/files/preferred_terminology_final.pdf

² Kabba, K., 2011. Gender-neutral language: an essential language tool to serve precision, clarity and unambiguity. *Commonwealth Law Bulletin*, 37(3), pp.427-434.

³ United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), 1992. CEDAW *General Recommendation No. 19: Violence against women*, para. 11-18. Violence against women includes sexual harassment, sex trafficking, sexual assault, family violence forced marriages, acid attacks, etc.

⁴ Humanitarian Exchange, 2014. *Special feature Gender-based violence in emergencies*, Commissioned and published by the Humanitarian Practice Network at ODI, No.60, viewed April 2018, https://odi.hpn.org/wp-content/uploads/2014/02/HE_60_web_1.pdf: “Divergent views and perspectives could lead to healthy and rigorous debate and to more appropriate and more effective humanitarian response. However, lumping all forms of gendered and sexualised violence together under a violence against women and girls framework without a sound understanding and explanation of the causes, drivers and impacts of such violence on individuals, families and communities is potentially harmful”.

gender-neutral language in drafting legislation has been proposed to serve precision, clarity and unambiguity;⁵ and from a human rights perspective, gender-neutral language might also better reflect formal equality. Consequently, it might be useful to use the term IPV to reference the general phenomenon of violence between partners and its different abusive manifestation; IPV against women when such violence is perpetrated by a male or female partner against a woman; IPV against men when such violence is perpetrated by a female or male partner against a man; and finally, TDV as a general acceptance of violence between adolescent partners.

Risk and Intersectionality in IPV

In complying with due diligence procedures and international obligations, States should pay attention to the risk-factors associated with IPV and commission studies to obtain national data that reflects the reality and complexity of IPV within a particular territory, as well as the socio-economic or cultural contexts of victims and perpetrators. In doing so, defining IPV in an inclusive way, to include all patterns of abuse, such as reproductive coercion, physical, sexual, emotional, financial, administrative or spiritual abuse, is highly encouraged. It has been observed that obstacles for measuring IPV are the lack of definitions and understandings of the concept and the source of the data.⁶ Relevant stakeholders mandated to conduct IPV studies should strive to obtain data from primary rather than secondary sources and use an inclusive sample of individuals, paying particular attention to the intersectional nature of due diligence obligations. For example, homosexual men tend to be disregarded by research initiatives despite the peculiarities in the nature of IPV within homosexual relationships, such as specific threats of disclosure of sexual preference and HIV status to the community.⁷

It is important to assess risk factors connected to all abusive manifestations and not focus solely on grave cases, resist the temptation to believe that femicide or IPV homicides tell the whole story of IPV in a population. Using due diligence in response to individual, relational and societal risk in IPV requires an advanced understanding of the population targeted by programmatic planning and policy, which in turn, demands that all groups are considered

⁵ *Supra*, note 2

⁶ Ruiz-Pérez, I., Plazaola-Castaño, J. and Vives-Cases, C., 2007. Methodological issues in the study of violence against women. *Journal of Epidemiology & Community Health*, 61(Suppl 2), pp.ii26-ii31.

⁷ Mulrone, J. and Chan, C., 2005. *Men as victims of domestic violence*. Australian Domestic and Family Violence Clearinghouse Topic Paper, viewed April 2018, [http://: www.austdvclearinghouse.unsw.edu.au](http://www.austdvclearinghouse.unsw.edu.au).

when measuring any element of IPV. States should also be resistant towards instinctively developing policies and laws related to the prevention of IPV, based on transnational discourses, global factors influencing IPV or outdated data, reflecting a historical understanding of IPV. Instead, States should strive to adopt evidence-based measures that respond to the political, social and cultural context of the country in question, after a thorough identification of the protective factors and risk-factors for IPV in a particular time and place. Vulnerable groups such as children, migrants, people with disabilities, the LGBTQ community and other marginalised groups should be particularly considered, to expose the unique risks they might face as well as the protective factors that might lead to their enhanced protection. Particular attention should also be paid to interracial relationships where individual elements interact with cultural elements and can sometimes increase the risk for IPV.⁸

Intersectionality provides a theoretical framework that takes into account the totality of an individual's circumstances and multiple identities. [...] Rather than recognizing the vast structural conditions and institutional disparities that produce increased victimization, ethnic differences continue to be viewed solely in a cultural context which leads to stereotyping and victim blaming. Overall, intersectional thinking can reframe our understanding regarding IPV, victimization, and justice processes.⁹

Acknowledging the evolving nature of IPV

In Chapters II and III, I have signalled that new forms of abusive manifestations between partners are coming to light, such as reproductive coercion. Additionally, the literature recently reports spiritual abuse consistent with “denying or manipulating religious beliefs or practices to force victims into subordinate roles or to justify other forms of abuse”.¹⁰ A peculiar type of abuse that men experience is legal or administrative abuse that consists of “some perpetrators manipulating legal and administrative resources to the detriment of their

⁸ Brownridge, D. A., Taillieu, T., Chan, K. L., & Piotrowski, C. 2018. Understanding the Elevated Prevalence of Intimate Partner Violence in Interracial Relationships. *Journal of Interpersonal Violence*.

⁹ O’Neal, E.N. and Beckman, L.O., 2017. Intersections of race, ethnicity, and gender: Reframing knowledge surrounding barriers to social services among Latina intimate partner violence victims. *Violence against women*, 23(5), pp.643-665.

¹⁰ Morgan, A. and Chadwick, H. 2009. *Key issues in domestic violence*. Australian Institute of Criminology, Research in Practice no. 7.

male partners”.¹¹ It is important that States and all relevant stakeholders remain open to the evolving nature of IPV and start recognising these subtle forms of abuse and consequently, modify legislation to reflect the realities of IPV. Few States have recognized new forms of IPV and definitions usually frame IPV as a physical, mental or in best cases, economic experience, living out other manifestations.¹²

More research is needed regarding the prevalence, risk-factors and motivations behind these new forms of abuse and their conceptualization or relation with international human rights; as well as research related to the identification of protective factors for new forms of IPV. In line with the evolving nature of IPV, stakeholders should also focus on the role of new technologies as a means to proliferate abuse in romantic relationships. It was mentioned in Chapter IV that teen dating violence manifests additional online propensity but cyber abuse remains understudied both in adult and adolescent relationships. The scholarship reiterates a “clear need for continued research on cyber abuse, which will broaden our understanding of partner abuse and may identify targetable areas for intervention and prevention programs”.¹³

Early findings suggest that cyber abuse in college students has a 40% prevalence rate, with no significant gender discrepancy in victimization; which suggests an alarming need for including cyber-abuse countering measures in educational curricula and policy planning, both for teens and young adults:

Educational institutions should include cyber abuse in policies regarding interpersonal violence, which will help ensure that students experiencing cyber abuse will be protected and provided with resources.¹⁴

Spaceless violence or technology-facilitated violence has its own characteristics in regards to the narratives that surround its normalisation and justification, both online and offline; and

¹¹ Tilbrook, E., Allan, A. and Dear, G., 2010. Intimate partner abuse of men. Men's Advisory Network. Perth, Western Australia.

¹² See Thomas Reuters Foundation, 2013. *A landscape analysis of domestic violence laws*, viewed May 2018, <http://www.trust.org/contentAsset/raw-data/02bf55c6-0d6b-4799-b9ba-eab57c5b93a9/file>: Vietnam appears to be the only State that recognizes spiritual abuse out of the 25 States examined in the Report. Financial abuse seems to be recognized more uniformly (Cambodia, China, Czech Republic, France, etc.) and physical and mental abuse appear to be included in almost all definitions of domestic violence.

¹³ Wolford-Clevenger, C., Zapor, H., Brasfield, H., Febres, J., Elmquist, J., Brem, M., Shorey, R.C. and Stuart, G.L., 2016. An examination of the Partner Cyber Abuse Questionnaire in a college student sample. *Psychology of violence*, 6(1), at 156.

¹⁴ id.

seemingly we do not fully understand what is socially acceptable online and the idea of online social acceptability seems to change continuously and rapidly.¹⁵ At the same time, the internet should be regarded by stakeholders as a place where they can deliver due diligence measures, a place where individuals can access information, gain awareness of IPV or receive counselling through virtually-based services. Technological advances can be used to “hold offenders accountable, with videos, GPS records, and texts and emails being used by law enforcement and prosecutors in their cases”.¹⁶ States should explore opportunities for using technological advances to provide victims with safety and researchers should investigate if and how these technologies can help lower risk-factors for IPV or facilitate an enhanced collaboration and connection between authorities and individuals. In doing so, States should always remain open to the evolving nature of human relationships and consequently the changing nature of violence between partners. Legislation and interventions, at an international and domestic level, need to reflect social realities and must be modernized to include new forms of abuse such as cyber-violence, spiritual abuse and reproductive coercion.

A focus on perpetrators

While researching IPV and reviewing the literature related to the core concepts of the phenomenon, I have encountered a large majority of studies focused on victims and this tendency seems to prevail all around the world. Researchers have now inquired into IPV victimology, asking why and how victims report IPV, why don't they leave a violent relationship, how does the risk for IPV increase with pregnancy or what happens to victims in the aftermath of a violent relationship.¹⁷ Many victim-centric questions have been asked. At the same time, legislative or policy initiatives that establish a certain measure to prevent IPV, are centred on victims and simply put, seek to save the victim and punish the perpetrator. It could have been easily observed along this thesis as well, that the exploration of State obligations to prevent IPV and the normative content of these obligations, is preponderantly

¹⁵ Fitz-Gibbon, K., Walklate, S., McCulloch, J. and Maher, J. eds., 2018. *Intimate Partner Violence, Risk and Security: Securing Women's Lives in a Global World*. Routledge.

¹⁶ Courchesne, C. and Rooney, R. 2015. *3 big ways technology can help prevent domestic and sexual violence*, MaineFocus Project, viewed April 2018, <http://mainefocus.bangordailynews.com/2015/03/24/mainefocus/domestic-and-sexual-violence/3-big-ways-technology-can-help-prevent-domestic-and-sexual-violence/>

¹⁷ Felson, R.B., Messner, S.F., Hoskin, A.W. and Deane, G., 2002. Reasons for reporting and not reporting domestic violence to the police. *Criminology*, 40(3), pp.617-648; Herman, J.L., 2015. *Trauma and recovery: The aftermath of violence--from domestic abuse to political terror*; Hachette UK; Jasinski, J.L., 2004. *Trauma V, and Abuse. Pregnancy and domestic violence: a review of the literature*, 5(1), pp.47-64.

related to what the *State should do for victims*, to ensure their protection against IPV. A small amount of studies have focused on exploring motivations for perpetrating IPV or recidivism rates in offenders but it is doubtful that the information provided is sufficient to design State measures that lower perpetration risk factors.

In Chapter II, I have discussed a number of factors that increase the risk of offending, such as alcohol abuse, anger and hostility, witnessing violence as a child or drug use.¹⁸ We must then ask if State punishment is oriented adequately towards addressing these factors, and if not, what the implications of this approach are. I have previously mentioned that one obvious risk that a community runs, when justice for IPV is retributive rather than transformative (*i.e. aimed at punishing the perpetrator rather than focus on his rehabilitation and transformation*) is that, at the end of incarceration or punishment, in whatever form, the individual could become abusive with another partner. The theme of State obligations to rehabilitate perpetrators of IPV is often neglected and it has been said that “justifications for rehabilitation are essentially moral arguments about what society ought to do in relation to offenders”.¹⁹ But in the case of IPV, there might be another idea, left uncultivated: that rehabilitation is an argument of what society and the State must do for future victims and communities.²⁰

Just as state-obligated rehabilitation is based on the rights that offenders share with other citizens even after they have offended, communitarian approaches to rehabilitation recognize that offenders mostly belong to communities, and that their memberships and affiliations need to continue, or to be repaired, if they are to be reintegrated into normal membership of communities.²¹

Moving forward, it is paramount that research into IPV pays more attention to perpetrators and States explore rehabilitation techniques in IPV offenders as anticipative prevention,

¹⁸ Foran, H.M. and O’Leary, K.D., 2008. Alcohol and intimate partner violence: A meta-analytic review. *Clinical psychology review*, 28(7), pp.1222-1234; Stith, S.M., Smith, D.B., Penn, C.E., Ward, D.B. and Tritt, D., 2004. Intimate partner physical abuse perpetration and victimization risk factors: A meta-analytic review. *Aggression and violent behavior*, 10(1), pp.65-98.

¹⁹ Raynor, P. and Robinson, G., 2009. Why help offenders? Arguments for rehabilitation as a penal strategy. *European Journal of Probation*, 1(1), pp.3-20.

²⁰ *id.*

²¹ *id.* at 13-14

replacing or supplementing the classical model of IPV punishment. Best practices in Germany suggests that working with perpetrators has shown to be advantageous:

Eight programmes for perpetrators of domestic violence were evaluated, and this showed that perpetrators' programmes, supported by judicial requirements, can achieve changes in behaviour. [...] The majority of men who have completed a perpetrator programme accept responsibility for their violent behaviour and are able to cope with their partner's needs and to accept their autonomy.²²

Research on perpetrators should also focus on identifying motivations for IPV in adults and youth and inquire about how these motivations can inform possible preventative strategies. Perpetrator interventions should be considered inter-disciplinarily, and the exploration of alternative protective factors that might lower recidivism or prevent IPV altogether, such as medical and psychological avenues, should be considered. A recent study found that psychedelic use is correlated with better emotional regulation and has a direct impact on IPV perpetration:

A history of psychedelic use among males was inversely associated with perpetration of physical violence against an intimate partner. the protective effects of psychedelic use for partner violence may generalize across correctional and community samples of men.²³

Indeed, the use of psychedelics for lowering IPV remains partially speculative and the validity of this intervention is dependent on further legal constraints, such as the status of psilocybin and psilocin in different countries around the world. However, it should not be ignored that research and policy should remain open to exploring medical, psychological or inter-disciplinary avenues for better emotional regulation, which in turn, could decrease IPV perpetration.

²² European Institute of Gender Equality, 2015. *Preventing domestic violence*, Good practices, at 78, viewed April 2018, http://eige.europa.eu/sites/default/files/documents/MH0114678ENN_WEB.PDF

²³ Thiessen, M.S., Walsh, Z., Bird, B.M. and Lafrance, A., 2018. Psychedelic use and intimate partner violence: The role of emotion regulation. *Journal of psychopharmacology*.

Human rights awareness, visibility and education

To comply with the anticipatory and preventative part of the due diligence framework, it is recommended that States encourage individuals to recognize IPV, in all its forms. Individuals must be prompted to engage competent State authorities in the development of a safety plan, according to their needs, to leave the relationship, seek protection or explore positive ways of dealing with relational conflict. As discussed throughout the thesis, the State can only intervene in IPV once it has knowledge that the abuse has or will take place; and it is precisely that information that will also trigger international responsibility, if State authorities respond passively. If awareness campaigns are being implemented, these should go beyond informing communities that IPV exists; they should point out the risks of IPV as well as the many forms it can take and make individuals aware of existing services and the fact that leaving an abusive relationship is indeed possible.

Additionally, individuals should be empowered through education, informed about the multiple abusive manifestations that can occur and the consequences these can attract for victims, their children and communities. Research in these aspects is highly encouraged as well. It would be beneficial to assess the extent to which the general population understands or identifies the risks and consequences of IPV; as well as the information individuals possess in regards to their human rights and what is expected from State authorities in cases of IPV. More importantly, all individuals should be made aware of the possibilities of seeking redress for human rights violations, at a regional and international level. On the subject of the United Nations human rights system, there appears to be “a lack of awareness and understanding, among the general public, about how [human rights bodies] operate and how to access them”.²⁴ At the same time, human rights bodies themselves seem to suffer from “a lack of public transparency and thus accountability”.²⁵

States and international organizations should strive to educate individuals about their human rights in a way that these can hold States accountable, for IPV as well as other human rights violations. Otherwise, the human rights system itself would be deceptive, holding States to a

²⁴ Universal Rights Group, 2018. *Reform of the UN human rights petitions system, An assessment of the UN human rights communications procedures and proposals for a single integrated system*, Policy Report, prepared by Marc Limon viewed April 2018, http://www.universal-rights.org/wp-content/uploads/2018/01/URG_Policy_report_Reform_Human_rights_petition_system_22_12_17_spread_High-resolution.pdf

²⁵ *id.*

high standard that the transnational system itself cannot deliver. The human rights system needs to lead by example. Accessibility and accountability invest States and international organizations with credibility and when they lack these qualities, the foundation of the entire human rights system can be distrusted:

The UN human rights communications procedures are central to the purpose, effectiveness and credibility of the United Nations – representing the only direct link between the victims of human rights violations and the international human rights protection system. However, over the past half-century, what was once a vibrant part of the UN’s human rights work [...] has become gradually discredited – the victim of growing complexity and distance from ‘the Peoples’ of the United Nations.²⁶

Human rights awareness must be increasingly demanded and delivered, at all levels, from an international, to a national, regional and municipal level, for all individuals. Human rights education is particularly important for vulnerable individuals, such as children, people from rural areas, people with disabilities and those facing discrimination and poverty.

The key to making the Treaty Body communications procedures more visible, and increasing general public awareness about this important channel of remedy and redress, appears to be the victim’s ability to gain access to domestic support networks made up of, for example, lawyers, local human rights NGOs or, in some cases, trusted national human rights institutions (NHRIs).²⁷

The demands for increased human rights awareness also target the European regional system, that for many individuals, remains unknown or intimidating; and “a lack of awareness and understanding as to the Court’s real purpose and jurisdiction” recognized in 2005, seems to still persist.²⁸ All international organizations and States should thus promote a human rights conceptualization and understanding of systemic societal issues like IPV. States must raise awareness on how citizens can hold institutions accountable and what conduct authorities

²⁶ id.

²⁷ id.

²⁸ Review of the Working Methods of the European Court of Human Rights, 2005. The Lord Woolf, conducted on the invitation of the Secretary General of the Council of Europe and the President of the European Court of Human Rights, viewed May 2018, https://www.echr.coe.int/Documents/2005_Lord_Woolf_working_methods_ENG.pdf

must follow, fostering trust in the supremacy of the law and State institutions. The international community through its institutions, and more importantly, human rights bodies should increase pressure on States to intensify transparency in their national accountability mechanisms and intensify their efforts for promoting human rights education.

IPV in the media

To accomplish anticipative prevention, States should take all measures to ensure that the media is an ally in the fight against IPV and encourage “responsible, sensitive and ethical reporting.”²⁹ This implies recognizing the media as a powerful stakeholder and acknowledging the societal role of the media as opinion makers, trend builders and emotional story tellers.³⁰

How media present the issue of IPV may impact the attributions people make for responsibility, in terms of both who is to blame for IPV and who is responsible for finding a solution.³¹

It has been suggested that certain elements presented to the public related to an IPV episode have the ability to control the emotional response of the viewers: such as, the woman will bear more responsibility if she was presented as drunk or having an affair and the man might be perceived with sympathy if he suffered from mental illness.³² This, in turn, might have an impact on societal attitudes towards IPV and might discourage or encourage reporting or seeking help for IPV. Recommendations and guidelines related to media reporting of IPV and violence against women include:³³

- never minimise or sensationalise domestic violence or IPV
- avoid victim-blaming
- report the social context in which male perpetrated violence against women occurs
- use correct language and terminology

²⁹ Australia’s National Research Organisation for Women’s Safety (ANROWS), 2015. *Media representations of violence against women and their children*, State of knowledge paper, Issue 15.

³⁰ Palazzolo, K.E. and Roberto, A.J., 2011. Media representations of intimate partner violence and punishment preferences: Exploring the role of attributions and emotions. *Journal of Applied Communication Research*, 39(1), pp.1-18.

³¹ id.

³² id. at 13-14

³³ *Supra*, note 29

- avoid offering excuses for men's violence
- provide individuals or women with information on where to seek help

A recent study in Uganda focused on conducting a media campaign at a film festival, through the screening of dramatized IPV vignettes; was successful in reducing IPV post-screening.³⁴ The study observed that lower rates were associated not with increased empathy towards IPV victims but played an important role on bystanders, showing an increased community willingness to intervene. The study confirms the potential of the media as an important ally in IPV deterrence, due to its reduced costs and potential for larger impacts:

Clearly, the policy aim of reducing IPV is achievable through both intensive on-the-ground NGO efforts as well as via mass media. The former offer opportunities for other forms of social change and capacity-building, but the latter has distinct advantages in terms of cost and scalability.³⁵

It is recommended that State legislation provides for sensitization of the media and ethical reporting and “encourag[e] the communications media to avoid stereotyped roles that legitimize or encourage domestic and family violence”.³⁶

Eliminating stereotypes

IPV is a concept surrounded by countless stereotypes. In various chapters, I have mentioned that gender stereotypes and societal attitudes portraying women as weak, subservient and sexually objectified and men as decision-makers, bread-winners and powerful, hold an important role in influencing IPV. These ideas impact how communities and individuals respond, report and how they act to eliminate IPV in their lives and in the lives of others. Other stereotypes in IPV are the idea that it exclusively concerns adults or occurs only in adult relationships and that the perpetrator is always male and the victim is a female, leaving

³⁴ Green, D.P., Wilke, A. and Cooper, J., 2017. *Reducing intimate partner violence through informal social control: A mass media experiment in rural Uganda*. Working paper.

³⁵ id.

³⁶ United Nations, 2010. Department of Economic and Social Affairs Division for the Advancement of Women, *Handbook for legislation on Violence against Women*, at 28, viewed May 2018, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

out the narratives of homosexual relationships and relationships between adolescents.³⁷ In reality, when it comes to TDV for example, the research examining gender asymmetries is still scarce, and from the existing data, the reality is that prevalence is very similar: one study reporting “64.7 percent of females and 61.7 percent of males [experience] dating violence victimization between age 13 and 19”.³⁸ Other stereotypes include the idea that women with reduced economic power and a low level of education are more likely to be victimised, and these circumstances *usually* act as risk factors. But, in Norway for example, it was found that women with higher income or education than their partners have an increased risk of being exposed to IPV.³⁹

There is no *one size fits all* story that encompasses all IPV narratives and States should resist the temptation of generalizing IPV occurrences. While research settles the score and definitely and consistently generates evidence on how much reality there is behind the stereotypes or generalised notions of IPV, the human rights system and States mandated to protect individuals cannot remain inactive. Everyone, without discrimination and beyond stereotypical and preconceived ideas, should have access to the same standard of protection against IPV. For that reason, States must actively try to combat age, gender and sexuality stereotypes surrounding IPV as a preventative measure. It is recommended that all stakeholders and all authorities intervening in IPV are trained to identify and reject stereotypical beliefs and that policies, campaigns and other initiatives are designed to be inclusive and intersectional.

Screening and reporting

Another anticipatory preventative measure that States can adopt to ensure that, if and when IPV occurs, State protection is offered, is to encourage reporting. This measure should not target only victims of IPV, but the community at large, as well as relevant stakeholders, such as doctors, social workers and other authorities that might be in a position to receive

³⁷ See Meza-de-Luna, M.E., Cantera, L.M., Blanch, J.M. and Beiras, A., 2016. Stereotypes of Intimate Partner Violence: Do Sex and Sexual Orientation Matter?. *Psicologia: teoria e pesquisa*, 32(3).

³⁸ Bonomi, A.E., Anderson, M.L., Nemeth, J., Bartle-Haring, S., Buettner, C. and Schipper, D., 2012. Dating violence victimization across the teen years: Abuse frequency, number of abusive partners, and age at first occurrence. *BMC public health*, 12(1), at 637.

³⁹ Bjelland, H.F., 2014. En voldsom maktbalanse? En studie av relativ makt og forekomst av partnervold. *Sosiologisk tidsskrift*, 22(01), pp.51-74, [translated from Norwegian].

information related to the existence of an abusive relationship. Through reporting, State authorities are given an opportunity to intervene and extend human rights protection and apply due diligence standards and procedures. However, mandatory reporting is a sensitive issue and, in situations where an exchange of information between the victim and an authority is confidential, the law must provide for an opportunity to balance the publicity of IPV with the rights and needs of the victim. Moreover, it is recommended that reporting is treated as an early intervention, and mainstreamed into policies seeking to prevent teen dating violence. If and when positive relationships education is provided to youth, reporting should be discussed and encouraged, giving the State the chance to address certain risk-factors before adulthood is reached. Additionally, for the State to gain knowledge of ongoing IPV cases, screening initiatives can be introduced as part of healthcare initiatives, in medical centres or pediatric settings.⁴⁰ Screening for IPV has been deemed by some as controversial or potentially ineffective.⁴¹ But, from a human rights perspective, the State must take all possible steps to obtain a clear prevalence picture of IPV in a population, in order to design due diligence measures that protect victims of present or future violence. For that reason, screening initiatives combined with referral and reporting reinforcement might represent a successful preventative approach for IPV. As mentioned earlier, screening should not focus solely on physical forms of IPV and the agencies and individuals involved in screening should be encouraged to expose all possible abusive manifestations consistent with IPV. Spiritual leaders might have an increased ability to uncover spiritual abuse, just as gynaecologists and reproductive care specialists can discover cases of reproductive coercion. The State should establish partnerships with all relevant stakeholders in screening to ensure that all forms of IPV are efficiently exposed.

Mitigating risk through pro-active conduct

In chapters V and VI, the normative content of due diligence obligations to prevent IPV has been discussed and the main element tying together the various facets of State interventions is represented by *proactivity in State responses*. To avoid international responsibility, States

⁴⁰ Decker, M.R., Frattaroli, S., McCaw, B., Coker, A.L., Miller, E., Sharps, P., Lane, W.G., Mandal, M., Hirsch, K., Strobino, D.M. and Bennett, W.L., 2012. Transforming the healthcare response to intimate partner violence and taking best practices to scale.

⁴¹ Baird, K.M., Saito, A.S., Eustace, J. and Creedy, D.K., 2018. Effectiveness of training to promote routine enquiry for domestic violence by midwives and nurses: A pre-post evaluation study. *Women and birth*, 31(4), pp.285-291.

must react to ensure that IPV is interrupted and does not escalate or continue between partners. This requires that authorities (a) react pro-actively, assessing and addressing risk factors, (b) take measures to ensure the immediate Protection of victims, (c) ensure that Protection is guaranteed without unnecessary delays and proceed to Prosecute, Punish and Provide redress.⁴² In some cases, authorities will have to address a multitude of factors and make referrals to shelters, assist victims in getting a protection order, arrest the perpetrator, etc. This complexity makes it easy for authorities to provide uncoordinated or chaotic responses and fail to provide a holistic reaction to an IPV case.

For that reason, training for appropriate IPV responses is vital as well as the adoption of State policies, protocols of conduct and laws that ensure a personalised, structured and risk-centric response to IPV. A personalised response to IPV implies that all State actors treat every victim and case with serosity and actively seek to uncover the characteristics of violence in that particular couple. Responses to IPV should be formalised as much as possible through protocols and statues, and laws should establish well-defined duties of State officials involved in IPV, especially police forces.

Galina Komar, who had been assaulted and was being stalked by her ex-boyfriend, told a judge that he would kill her. The judge released him from jail on time served because there were no new charges. When her former partner tracked Ms. Komar down at her job at a car sales lot and shot her and himself, the judge said the case was indistinguishable from the hundreds of other misdemeanor assault cases he presided over that did not end in murder.⁴³

As it can be observed, the State actor (judge) in the Komar case failed to act pro-actively in the mitigation of risk and made the mistake to equate that particular IPV case with all others he had presided over. Acting diligently and in accordance with human rights standards, requires that State authorities are aware of their role in preventing IPV and provide a personalised legal response to every victim in every uncharacteristic situation. It is highly recommended that States provide training to all authorities and stakeholders involved in IPV and that this training is risk-centric and human rights oriented, making authorities conscious

⁴² *Rumor v. Italy*, Appl. no. 72964/10, Judgement 27/08/2014.

⁴³ Roehl, J., O'Sullivan, C., Webster, D. and Campbell, J, 2005. *Intimate Partner Violence Risk Assessment Validation Study*, Final Report, viewed May 2018, <https://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf>

of their role in administering individual and systemic due diligence responses and preventing IPV on an individual and relational level.

Holistic human rights approaches

States around the world have different approaches to combating IPV and comply with human rights standards to different degrees and in different ways. No State is like another in regards to the risks its population faces for IPV or the measures that should be adopted to prevent partner abuse. However, in general, two levels of IPV awareness and prevention activity are apparent: an abecedarian level, in States where IPV is not yet decriminalised or IPV legislation has not yet been adopted, such as Kuwait, Qatar, Belarus, Bahrein, Lebanon, Uzbekistan, etc.⁴⁴ In some of these countries, some forms of IPV can still be legal, such as marital rape.⁴⁵ It is clear that due diligence, in some of these countries, might translate into adopting basic legislative approaches and changes of societal attitudes. Prevention of IPV often follows a logical and sequential order, starting with basic changes, such as decriminalization of IPV and reaching further levels of human rights compliance, as it would be building shelters to guarantee the right to housing. This does not necessarily imply a hierarchy between human rights but simply reflects the manner in which progress unfolds.

Therefore, it is a common sense observation that often States start by protecting the right to life or physical integrity of individuals, protecting them against ill-treatment through criminal law and use economic, social and cultural rights secondarily, as an anchor to increase effectiveness of these civil and political rights. On the other hand, an advanced level for the prevention of IPV exists, predominantly in the European Union countries and the West, where countries have adopted abundant laws and policies related to IPV. For example, in Spain, Luxembourg, Austria, Germany, Denmark or France, good practices have been detected, such as specialised training for professionals, awareness campaigns or the existence of support services.⁴⁶ Most of these countries have specialised family or domestic violence laws in place. In these States, the discussion regarding IPV prevention has become rather

⁴⁴ UN Women, 2011. *Progress of the World's Women: In Pursuit of Justice, Women's legal rights around the World*, Data Spreadsheet, viewed May 2018,

https://docs.google.com/spreadsheets/d/1Lcx20o5uHZkkGtm9xDA-8TLczTJkKyZDbuCWxR0vMlw/edit?hl=en_US&hl=en_US#gid=0

⁴⁵ id.

⁴⁶ *Supra*, note 22

oriented towards finding ways of increasing effectiveness of existing laws and policies and paying increased attention to economic, social and cultural rights and their role in preventing IPV.

It is recommended that for the prevention of IPV, States approach both categories of human rights with equal determination for compliance and understand that due diligence demands a holistic tactic for prevention. An active State intervention to protect victims against violations of the right to life or ill-treatment, only when the abuse has reached critical levels, although necessary, might not be sufficient to prevent IPV in a community. In ensuring that a holistic approach is adopted, States must be determined to address a number of pivotal issues such as gravity determinism and resource allocation.

Eliminating gravity bias

Media, authorities and even family violence campaigns sensationalise physical violence— as they should. Literature tells us there are other forms of abuse and most organisations are aware, but in all my time away from my ex-husband, I have yet to encounter any professional who truly understands the other types of family violence. These are no less significant or dangerous than physical violence.⁴⁷

Gravity bias, in the context of IPV, signifies that States should eliminate the preconception that only physical IPV necessitates authorities' intervention or that only severe cases of IPV merit the attention or resources of the State. Along with age and gender discrimination and stereotypical attitudes, gravity bias can be a great obstacle to utilizing early interventions. It can have its roots in the incomplete legal construction of IPV as a crime, where for example, IPV is only sanctioned if its manifestations are of physical nature. Additionally, individuals who suffer non-physical forms of IPV might be dismissed by authorities and other individuals due to the lack of understanding of the cycle of abuse and the dangers of escalation, as well as the long-term consequences associated with non-physical forms of abuse.

⁴⁷ Neave, M., Faulkner, P. and Nicholson, T., 2016. Anonymous submission, Royal Commission into family violence: summary and recommendations. *Victoria: Victorian Government Printer*.

As an anticipative preventive measure, it is highly recommended that gravity bias is contemplated as a stereotypical attitude in IPV and consequently addressed by States through specialised training for all authorities that come in contact with IPV disclosures. The scholarship should pay additional attention to non-physical forms of IPV, such as financial abuse, spiritual or administrative abuse, investigating how these forms come to manifest, how they affect all individuals involved and what consequences they might attract. In cases where IPV follows an escalation pattern, early interventions require early disclosures and receptive authorities that are ready to recognise abuse and take measures from its incipient stages.

Allocating sufficient resources for the prevention of IPV

An additional issue that concerns both anticipative prevention as well as escalation mitigation is related to the resources the State is willing to commit to the fight against IPV. Globally, the costs associated with IPV are extraordinary:

Estimates suggest that the costs of violence are high; the welfare cost of collective, interpersonal violence, harsh child discipline, intimate partner violence and sexual abuse are equivalent to around 11 per cent of global GDP. Globally the total cost of female homicides is estimated at around \$105 billion.⁴⁸

The costs associated with IPV vary across countries but, from an economic standpoint, there are indications for fair speculation that generally, more capital is being spent to deal with the consequences of IPV rather than to prevent it. How are budgets and finances a theme in IPV? The answer is dual: first, resources are needed to address economic or social risk-factors in victims and perpetrators; and second, resources need to be allocated for the training of authorities and for building IPV institutional infrastructure. States must allocate resources targeting the education, empowerment and social welfare of the population to guarantee the fulfilment of economic, social and cultural rights, as a measure of anticipative prevention. Access to education, sanitation, healthcare, housing and affirmative action measures to ensure

⁴⁸ Fearon, J. and Hoeffler, A., 2014. *Benefits and costs of the conflict and violence targets for the post-2015 development agenda*. Conflict and violence assessment paper, Copenhagen Consensus Centre.

substantive equality in education and the labour market are a few examples in which the State can contribute to addressing the economic and social risk factors associated with IPV.

But, resources must also be allocated for the due diligence response to IPV, such as the provision of shelters, the training of judges, police forces, prosecutors, the establishment of national hotlines, for specialised human resources such as social workers, etc. Indeed, a prioritization between targeted outcomes and available resources is difficult to achieve. This poses the question of whether one measure can be regarded to have more importance and perhaps a better chance at making a difference and lowering the prevalence of IPV. It would be impossible to determine which measure could have the greatest success without understanding the socio-economic background of each State, as a prioritization of IPV measures could imply budget cuts in areas of health, infrastructure or regional development, and these cuts could lead, perhaps, to other human rights violations. The relationship between State expenditure and human rights compliance is complex and cannot be resolved by this thesis. However, it is important to note that one study conducted in the United States found that generally, the public is supportive of increased funding allocation for the prevention of IPV; and supported surcharges on violent video games and batterers' fines to raise thematic funds.⁴⁹ More than reporting findings on public acceptance on fundraising for IPV, the study design offers interesting hypotheses for sources of funding for IPV prevention. Alternative sources discussed in the study include surcharges on alcohol, license plates, marriage licenses or surcharges on music with violent lyrics.⁵⁰

Speculatively, one measure that has the potential of attracting the most positive short and long-term effects on IPV prevention is education. Evaluation studies have showed that educative interventions in young age are promising for altering IPV-related attitudes.⁵¹ The same results are usually found in the evaluation of adult intervention programmes.⁵² One study reports that in only 16 hours, an adult education initiative to combat physical IPV and controlling behaviours provided significant results:

⁴⁹ Sorenson, S.B., 2003. Funding public health: The public's willingness to pay for domestic violence prevention programming. *American Journal of Public Health*, 93(11), pp.1934-1938.

⁵⁰ *id.*

⁵¹ See, Chapter IV; Fox, C.L., Corr, M.L., Gadd, D. and Sim, J., 2016. Evaluating the effectiveness of domestic abuse prevention education: Are certain children more or less receptive to the messages conveyed?. *Legal and Criminological Psychology*, 21(1), pp.212-227.

⁵² Owen, J., Antle, B. and Quirk, K., 2017. Individual relationship education program as a prevention method for intimate partner violence. *Journal of Family Social Work*, 20(5), pp.457-469.

Participants learn how relationships develop in healthy deliberate steps (e.g., through clear expectations, collaborative decision making, and with clear commitment, such as having a joint vision for the relationship, having a strong couple identity, mutual sacrificing behaviours). Participants are also challenged to understand what behaviours they find to be acceptable based on the models they have seen/experienced in their lives, as well as determine what they believe should be their “bottom line” of unacceptable behaviours. Additionally, the program also includes communication skills training.⁵³

Here, education refers not only to formal education in early years, but rather informal, re-educative measures and professional training. The adequate training of authorities in some cases of IPV, can make a difference between life and death and should be treated as a budgetary priority:

Looking back, that day in the station, if the police had not encouraged me to make a statement, I think I would have stayed in the relationship and, honestly, I think I would have died in that relationship. That’s where it was headed.⁵⁴

States should also strive to offer legal aid scheme for victims of IPV that demonstrate a financial insufficiency as financial factors should not represent an obstacle for reporting or prosecution. Without a serious consideration of institutional needs and a cost-benefits evaluation of IPV programmes and measures, these might not be entirely effective on their own. The formality the law possesses in establishing a commitment to eradicate IPV needs to be sustained by the powerful force of policies and programmes, by the allocation of resources in educating children and individuals, building shelters, establishing community support centres and improving institutional responses to IPV.

⁵³ id.

⁵⁴ Neave, M., Faulkner, P. and Nicholson, T., 2016. Royal Commission into family violence: summary and recommendations. *Victoria: Victorian Government Printer*, Appendix F, at 252.

One of the greatest challenges to the prevention of domestic violence is the perceived nature of violence in the domestic sphere. Many jurisdictions, and in particular France, Russia, South Korea and China (Taiwan) at least at a cultural level, still see domestic violence as a private family issue which should be dealt with within the family and not referred to an external authority.⁵⁵

While conducting research related to IPV, one idea has been persistently identified in the literature as well as documents of other stakeholders, such as State reports or NGO reports: the concept of the public/private divide and how the privatization of partner violence affects its prevention.⁵⁶ Historically, the legal concept of family in domestic laws has been usually regulated by civil laws and regarded as an issue of private law. This consideration is usually exposed in opposition with public law, which is regarded to contain norms regulating the relationship between the State (and its interests, such as maintain order and security) and private parties. International law is to a variable extent, an expression of domestic laws or at least bears some similarity with internal norms, to the degree of consensus between States in how certain social situations must be regulated. When international human rights law originated, a certain demarcation was made, between the situations that might fall within the area of personal autonomy, representing the private sphere, and social situations of public interest.⁵⁷ The concept of autonomy still persists and has been discussed in relation to the right to public and family life when I underlined the limits of State interventions in the context of IPV. The concept of due diligence changed the way in which certain relationships between private individuals must be viewed by the State and consequently imposed duties on the State to ensure that those private interactions are in accordance with human rights standards. The idea that States have human rights obligations to ensure that private actors interact peacefully and respect each other's human rights is not limited to intimate partner

⁵⁵ *Supra*, note 12, at. 10-11

⁵⁶ *E.g.* Moore, C., 2003. Women and domestic violence: The public/private dichotomy in international law. *The International Journal of Human Rights*, 7(4), pp.93-128.; García-Del Moral, P. and Dersnah, M.A., 2014. A feminist challenge to the gendered politics of the public/private divide: on due diligence, domestic violence, and citizenship. *Citizenship Studies*, 18(6-7), pp.661-675.

⁵⁷ Charlesworth, H., Chaiton, S. and Chinkin, C., 2000. *The boundaries of international law: A feminist analysis*. Manchester University Press.

violence; but extends to the interactions between parents and their children and other members of a family unit or an analogous group.⁵⁸

Due diligence delineated new boundaries between the interests of the State and private individuals and recognized that certain choices (such as choosing a partner, establishing a residence with that partner, choosing to formalise the relationship or not) pertain to an individual.⁵⁹ But, if those choices and interactions threaten the life, well being, dignity and rights of one of the individuals, the State has an interest in that situation, to maintain order and prevent these human rights violations. In that sense, due diligence brought publicity to an intimate setting that was initially conceptualised to pertain to the area of personal autonomy. However, this narrative has not yet penetrated certain cultures, institutions or legal systems and as it was mentioned earlier, in certain States the idea that intimacy and privacy extend to all happenings of a couple, including violence, is still predominant. The State is not an abstract concept, but is formed and represented by individuals, who might carry these preconceptions with them at the time they encounter IPV, either in a professional or private setting. To ensure that the State is successful in applying due diligence, it is exactly the public nature of IPV, that the State itself must understand and propagate. Thus, it is highly recommended that the State disseminates the publicity of IPV, through training and awareness-raising, to the community at large and most importantly, to the authorities who come in contact with IPV. There should be no assumption that State authorities are generally aware of the existence of human rights instruments or their methods for compliance. The latest Concluding Observations of on the sixth periodic report of Australia of the UN Human Rights Committee is an example of how much is still left to be done in the sphere of human rights education and training even in countries with advanced welfare systems:

The Committee is concerned about reports suggesting that there is limited awareness of the Covenant [ICCPR] among State officials, which, coupled with the failure to incorporate the Covenant into domestic law, could adversely affect the effective implementation of the Covenant at the domestic level.⁶⁰

⁵⁸ See Chapter IV: Due diligence obligations to prevent teen dating violence.

⁵⁹ Council of Europe, 2012. *Protecting the right to respect for private and family life under the European Convention on Human Rights*, Council of Europe Human Rights Handbooks, prepared by Ivana Roagna.

⁶⁰ United Nations, 2017. *Human Rights Committee Concluding observations on the sixth periodic report of Australia*. International Covenant on Civil and Political Rights, 1 December 2017, CCPR/C/AUS/CO/6.

It is paramount that all individuals are made aware of the public nature of IPV and the protective role due diligence accords to this public nature, as well as their human rights and the standards of compliance. It is the role of the State to educate individuals, both private and public actors, what rights they should comply with and how compliance should be carried out.

Additionally, the public-private divide, in the context of IPV is not limited to the individual-State binary but also refers to private companies and businesses. Companies play an important role in responding to IPV due to the effects that violence might have on work performance, work relocation and the link between economic independence and overcoming IPV. Recently, it has been debated whether corporate social responsibility implies a due diligence obligation of businesses to manage human rights risks associated with IPV:

The question arises, however, as to how far business enterprises' engagement with employees as an important stakeholder group should extent into what has traditionally always been seen as the private sphere of domestic life. Even if we accept a growing understanding of the importance of work-life balance and of the need for business to take employees' family and domestic concerns seriously, to what extent should an employer be responsible for assisting employees facing family difficulties?.⁶¹

For victims of IPV, businesses should adopt a flexible attitude to leave entitlements, requests of changing work shift patterns or hours or requests to “a physical relocation of the workplace, or a change to the employee's telephone extension number and/or email address”.⁶² However, business models should also pay attention to employees that are perpetrators of IPV. In this regards, businesses must protect the right to privacy and adopt measures that create a balance between “zero tolerance” and an encouragement to seek treatment and counselling:

Employee perpetrators assessed as being able to benefit from attending counseling/treatment sessions are most likely to benefit if they are able to remain

⁶¹ de Jonge, A., 2018. Corporate Social Responsibility Through a Feminist Lens: Domestic Violence and the Workplace in the 21st Century. *Journal of Business Ethics*, 148(3), pp.471-487.

⁶² id.

in the workforce. Guarantees of confidentiality are typically an important part of making this possible.⁶³

States should, through legislation and corresponding policies, promote corporate social responsibility and establish obligations for businesses to put in place internal IPV procedures and guidelines.

Refining international regulations

Much of the work done to reduce IPV has to be carried out at a domestic level, by State authorities. At the same time, the international human rights system plays a role in guiding States towards prevention and it would be beneficial if it offered clear directives and explanations as to how certain obligations must be fulfilled. In some instances, this could be done by clarifying the language of IPV, avoiding vague or ambiguous terms and mandates.⁶⁴ For example, Article 5 of the CEDAW stipulates that States should “take all appropriate measures” to combat gender stereotypes. What are those measures, how can States implement them domestically and what resources should be allocated to this particular ideal? The State must decide alone, to a degree, the methods it uses to comply with this obligation. This is known as the margin of appreciation of States. This margin of appreciation should be restricted as much as possible, to lower the possibility of States using it as a justification for non-compliance. Moreover, it is estimated that today, the international human rights system is comprised of approximately 300 rights, as opposed to 20 rights in 1975.⁶⁵ This “hypertrophy of human rights” signifies that States must make choices and prioritise certain rights and consequently invest more in some projects than others.⁶⁶ How should the State make that choice, given the indivisibility of human rights? Should the State choose to pursue educational programmes in schools that promote positive relationships, which have a long-term turnout, or should it invest in the training of its authorities to immediately improve responses to IPV? This lack of direction and lack of clear and coherent instructions that originates from human rights treaties has been harshly criticised:

⁶³ *id.*

⁶⁴ Posner, E.A., 2014. *The twilight of human rights law*, Oxford University Press, USA, at 86-90.

⁶⁵ *id.*

⁶⁶ *id.*

[...] Governments must fall back on making tradeoffs based on their conception of the public good. Human rights treaties can be no more than vague encouragement for governments to govern well—but it is hard to believe that governments already inclined to govern well or governments not so inclined, would change their behavior as a consequence of such encouragement. Because the treaties send conflicting signals and do not explain how one is to make tradeoffs, they could not provide guidance even to a government that was motivated to take them seriously.⁶⁷

Human rights bodies have the opportunity to make specific recommendations to a particular State, in relation to a particular human rights instrument, through Concluding Observations or to all States, through General Comments and Recommendations. Whilst these documents provide additional interpretations related to the causes of certain human rights violations and the different measures States can adopt to ensure adequate compliance, they usually fail to provide clear instructions. Going back to the above mentioned Concluding Observations of on the sixth periodic report of Australia of the UN Human Rights Committee, where a couple of recommendations related to domestic violence were made. The Committee urged Australia to “[ensure] that cases of domestic violence are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions”.⁶⁸ What are appropriate sanctions for domestic violence and consequently IPV? Which of the sanctions are more likely to guarantee long-term deterrence? The Committee also asks Australia to “step up preventive measures and ensuring their effective implementation”.⁶⁹ What does stepping up consist of and which preventive measures should Australia focus on? I have underlined that some preventive measures for IPV are related to the right to education, the right to mental health, some might be related to the right to housing. How can, for example Australia, choose an optimal preventative approach? In some occasions, the recommendations made are not as vague. For example, the same Human Rights Committee made recommendations to the Dominican Republic, urging the State to “[establish] accessible shelters throughout the country to cover current demand, including in rural areas [and] ensure that training

⁶⁷ *id.*, at 92-93

⁶⁸ *Supra*, note 60

⁶⁹ *id.*

programmes for members of the judiciary and the police are fully implemented”.⁷⁰ In certain cases, international mandates are fairly precise.

It is thus recommended that human rights bodies provide States with clear and precise instructions on how to address certain societal occurrences that involve multiple human rights and necessitate a complex compliance mechanism. The international human rights system must try to correct the vagueness or imprecision of certain norms present in certain treaties, through its proceedings and communications with States and must replace generalizations with rigor. This can be done by adopting a strict consensus among nations that IPV and other forms of societal violence are detrimental to communities, present and future generations and the price to pay for its consequences is better averted if States invest in prevention. Since human rights bodies receive reports from States around the world concerning their progress to avert human rights violations related to IPV, they can easily identify concrete steps that have been proven to work and make recommendations based on successful State practices. But, if States are to change their ways, their cultures and traditions, this implies that the human rights system must also be subjected to revision:

An international human rights body is an agent of the nations that establish it. The nations want their agent to serve certain purposes. Ideally, the agent would encourage or even compel the parties of the treaty to comply with the treaty and end their human rights violations. [...] But this has not happened with the human rights bodies. The human rights treaties papered over significant differences by using vague language and by piling on rights. When it comes time for implementation, the human rights agencies are put in the position of giving content to those provisions. Only then does it become clear that the level of agreement is shallow.

Perhaps it would be beneficial for UN human rights bodies to determine concrete steps for States to follow on a regional basis, where consensus could be better achieved and the interventions in question would be more feasible. The vagueness that critiques refer to is usually a product of legal pluralism, cultural differences, socio-economic disparities and

⁷⁰ United Nations, 2017. *Concluding observations on the sixth periodic report of the Dominican Republic*. International Covenant on Civil and Political Rights, 27 November 2017, CCPR/C/DOM/CO/6.

other discrepancies between States. If human rights bodies would group States based on various indicators that suggest their level of readiness to comply with human rights conventions, perhaps they could also deliver a much needed shift from “all appropriate measures” to “these explicit measures”. The relationship between human rights compliance and regional contexts has been acknowledged in the literature to be linked with regional pressures:

This dynamic may be stronger in the regional context because regional political and economic interdependence generates greater external pressure on countries to exhibit a commitment to human rights norms. When countries ratify regional treaties, therefore, the falloff in external pressure for real improvement in practices may be greater and the reduction in the pace of real improvement may consequently also be greater.⁷¹

Despite the fact that regional human rights instruments do exist and have their own separate monitoring mechanisms, it could prove beneficial for the UN human rights system to integrate regional considerations and establish a regional monitoring mechanism or provide certain regions with clear directives and goals for compliance with certain human rights provisions.

Psychological interventions, IPV and the right to mental health

Much has been discussed by scholars regarding the link between cognitive processes, emotion regulation, psychological impacts and IPV perpetration and victimization. As mentioned in the second chapter of the thesis, psychology is a discipline that contributed significantly to the explanatory narratives of IPV perpetration and mechanisms of action. In discussing the risks associated with IPV perpetration and victimization, psychological factors were included in the category of individual risk factors. However, the link between human rights (explicitly, the right to mental health), IPV and psychological process is yet to be consolidated within a framework that clarifies the duties of the State to provide accessible mental health services that contribute to IPV prevention. In 2017, the *Special Rapporteur on*

⁷¹ Hathaway, O.A., 2017. Do human rights treaties make a difference? In *International Law and Society* (pp. 3-110). Routledge.

on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, underlined the importance of addressing gender-based violence in his Report:

An environment that respects, protects and fulfils human rights and is free from all forms of violence, including gender-based violence, is fundamental for effective health promotion. Public health and psychosocial interventions are essential components of a rights-based mental health system, not a luxury. Relevant action must be based upon empowerment so as to enable individuals to increase control over and improve their health.⁷²

Short-term cognitive behavioural therapy (CBT) interventions have been proven successful in decreasing PTSD and depression symptoms in IPV victims and boost self-esteem; while the same CBT techniques have been shown to increase emotional regulation abilities in perpetrators, even when the intervention was conducted online.⁷³ A growing number of studies suggest that, even if IPV occurs due to a number of reasons separate from individual factors, psychological interventions such as CBT or couple therapy might be key to preventing further violence and offering a transformative experience for victims, reducing IPV impacts.⁷⁴ It then follows that States should make the availability, accessibility and perhaps gratuity of such interventions a priority. Do States have a human rights obligation to care for individuals' mental health, preventatively or responsively? In the 2017 *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, mental health was suggested to be at the core of the right to health protected by the ICCPR, CEDAW and other international instruments.⁷⁵ The Rapporteur mentioned that some obligations related to mental health are “not subject to

⁷² United Nations Human Rights Council, 2017. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/35/21.

⁷³ See Hesser, H., Axelsson, S., Bäcke, V., Engstrand, J., Gustafsson, T., Holmgren, E., Jeppsson, U., Pollack, M., Nordén, K., Rosenqvist, D. and Andersson, G., 2017. Preventing intimate partner violence via the Internet: A randomized controlled trial of emotion-regulation and conflict-management training for individuals with aggression problems. *Clinical psychology & psychotherapy*, 24(5), pp.1163-1177.; Arroyo, K., Lundahl, B., Butters, R., Vanderloo, M. and Wood, D.S., 2017. Short-term interventions for survivors of intimate partner violence: A systematic review and meta-analysis. *Trauma, Violence, & Abuse*, 18(2), pp.155-171.

⁷⁴ Satyanarayana, V.A., Nattala, P., Selvam, S., Pradeep, J., Hebbani, S., Hegde, S. and Srinivasan, K., 2016. Integrated cognitive behavioral intervention reduces intimate partner violence among alcohol dependent men, and improves mental health outcomes in their spouses: a clinic based randomized controlled trial from South India. *Journal of substance abuse treatment*, 64, pp.29-34; Karakurt, G., Whiting, K., Van Esch, C., Bolen, S.D. and Calabrese, J.R., 2016. Couples therapy for intimate partner violence: A systematic review and meta-analysis. *Journal of marital and family therapy*, 42(4), pp.567-583.

⁷⁵ *Supra*, note 72

progressive realization and must be implemented immediately, including certain freedoms and core obligations”.⁷⁶ Immediate obligations include the development of a national mental health strategy and the elimination of discrimination that might obstruct the access to these services. The Rapporteur explicitly urged States to consider the mental health of women, especially those who have suffered from violence:

Special attention should be paid to women, who suffer disproportionately from mental health practices that are based on paternalistic and patriarchal traditions, inappropriate and harmful gender stereotypes, medicalization of women’s feelings and behaviour, and coercion. Women who have suffered from violence and inequalities within their families, communities and societies, and who have mental health conditions very often face situations in mental health settings that amount to violence, coercion, humiliation and disrespect for their dignity. It is unacceptable that after suffering from violations in family and other settings, women suffer from violations again within services that are supposed to promote their mental health.⁷⁷

It appears that, at this stage, the right to mental health is undergoing a consolidation phase in which State obligations that encompass the promotion and protection of this right are being determined. So far, the obligations have not been conceptualised as due diligence obligations to prevent mental health issues of individuals. This is also confirmed, partially, by the limited ECtHR case-law dealing with mental health under the Convention; which refers primarily to detention and mental health. So far, the ECtHR has clarified that States must refrain from treatments that might cause mental or psychological harm and that “the State may also be required to take positive measures to protect the physical and mental health of individuals, such as prisoners, for whom it assumes special responsibility”.⁷⁸ At the same time, it appears that the rights of people with mental illness and on the other hand, the right of any individual to mental health, have not been duly delineated. In other words, the discourse regarding the right to mental health is tightly connected to the rights of people with disabilities, leaving no room for determining what standard of care should individuals who do not suffer from a mental disability, enjoy.

⁷⁶ id. para. 37

⁷⁷ id. para. 59

⁷⁸ Council of Europe, 2015. *Health-related issues in the case-law of the European Court of Human Rights*, Thematic Report, at 5.

More than ever, it appears imperative to seek an understanding of IPV through cross-sciences examinations. Recently, a study underlined the link between traumatic brain injuries and IPV, using a socio-ecological approach, and warned that more attention must be paid to bridge the gap between “psycho-physiological health and socio-cultural contexts”.⁷⁹ The importance of the connection between IPV and traumatic brain injuries is represented by the fact that it can create a predisposition towards subsequent victimisation: “having sustained a TBI can increase a battered person’s risk of further victimization, as the symptoms resulting from the injury may increase vulnerability to additional violence”.⁸⁰ Another recent study used a cognitive behavioural approach to understand the feelings, interactions and conditions of victims experiencing IPV.⁸¹ This approach proved valuable and it brought forward elements that are essential for the formulation of better medical, psychological and legal interventions. The study mentioned that often, couples use preventative approaches for IPV which ultimately fail, and that the feelings and behaviours that arise from IPV are complex:

Given that many if not all were physically overpowered by the perpetrator, some shared that they felt helpless and resigned to the belief that they could do nothing to stop the violence. Some were surprised when the abuse began. [...]. Even in the midst serious abuse, some victims were able to engage in preventive activities. The most commonly mentioned involved seeking safety. Some victims would find a safe haven in their home, or leave the house and seek refuge with a neighbor, friend, or family member. Some victims attempted to calm themselves and better manage their anger, using concerns about pain/hurt inflicted or what others might think, as incentives. Some victims attempted to calm the perpetrator.⁸²

For academics and all stakeholders alike, this represents a call to integrate efforts to approach the prevention of IPV medically, psychologically as well as socio-legally. For international human rights law, this means that the State obligation to provide access and gratuity to mental health services for victims and perpetrators must be immediately defined and made enforceable. The necessity of making mental health services available, especially for victims

⁷⁹ Hunnicutt, G., Lundgren, K., Murray, C. and Olson, L., 2017. The intersection of intimate partner violence and traumatic brain injury: a call for interdisciplinary research. *Journal of family violence*, 32(5), pp.471-480.

⁸⁰ *id.*

⁸¹ Ager, R.D., 2017. A qualitative study of intimate partner violence from a cognitive-behavioral perspective. *Journal of interpersonal violence*.

⁸² *id.*

and children, as part of a transformative redress remains undisputed. States should strive to incorporate mental health laws and policies into the prevention framework for IPV, ensuring that individual risk-factors such as depression, personality disorders and witnessing violence as a child are addressed.

The need for expansion and additional legislative measures

Shortly before this thesis has reached its finality, Sarkin published an article discussing due diligence in relation to violence against women, exploring the use of due diligence and proposing its expansion into 7Ps.⁸³ Sarkin proposes that due diligence should additionally encompass probing and an obligation of States to promote awareness and adherence to non-discrimination.⁸⁴ Additionally, he suggests that “there may be a need for a new binding international instrument that specifically prohibits violence against women and clearly articulates and delineates due diligence standards and processes with which that states need to comply”.⁸⁵ This need is often voiced in human rights circles, especially in women’s rights groups and goes along the perceived need for auxiliary binding declarations of how States should and will eradicate different types of violence against women. Instead, I conclude by arguing that the present human rights normative framework is sufficient and abundant and that the formality of an additional instrument will not respond to the present needs of combating IPV around the world. I refer here to IPV and not other forms of VAW that might potentially benefit from additional regulation.

The thesis argues that there is no need for further enactments due to the fact that the eradication of IPV depends on the will of the State to protect certain human rights, that have already been recognized in various treaties. IPV can represent a violation of the right to life, of the prohibition of ill-treatment, an issue of discrimination, a violation of the rights of the child, etc. according to the gravity, intensity, duration and the subjects involved in the abuse. Countries that find IPV acceptable and have not constructed a basic preventative model but have ratified human rights instruments need to be held accountable and sanctioned to comply; and those who have not ratified such instruments (e.g. Qatar, Singapore, Malaysia, Oman

⁸³ Sarkin, J., 2018. A Methodology to Ensure that States Adequately Apply Due Diligence Standards and Processes to Significantly Impact Levels of Violence Against Women Around the World. *Human Rights Quarterly*, 40(1), pp.1-36.

⁸⁴ id.

⁸⁵ id.

have not ratified the ICCPR; the US has not ratified the CEDAW)⁸⁶ must be pressured by the international community to adhere to these values. Countries that have both ratified the instruments and have a basic model of prevention in place, and I refer here mostly to Western States, member States of the EU and a number of other countries, need instruments and resources that enhance the effectiveness of existing policies and laws. Rather than new laws and new mandates that might take years to harmonize with pre-existing rights and State duties, communities and States would benefit more from enhancing the enforcement of current human rights norms. Moreover, as I demonstrated along the thesis, in order to adequately respond to IPV, States must identify the risk factors the population is experiencing, and through laws and policies, create an adequate institutional response, an evidence-based and proactive response that is tailored to the needs of that community. These operational and administrative demands are unlikely to be carried out simply by ratifying a new treaty. What States need to do, to prevent IPV, is understand their present obligations and allocate sufficient resources to establish anticipate and escalation mitigation mechanisms. As mentioned earlier, mainstreaming the existence and content of human rights instruments into State institutions is urgent.

The Committee recommends that the State party make the Convention sufficiently known, including by swiftly and widely disseminating it and its Optional Protocol thereto, as well the general recommendations of the Committee among the judiciary, law enforcement authorities, civil society and the general public, [and...] integrate the Convention, [...] in the university curricula for legal and related studies, and in capacity-building programmes for the judiciary and law enforcement officers.⁸⁷

Finally, expanding the due diligence framework could be beneficial, as long as new elements contain clear programmatic principles, grounded in international human rights norms. If new elements are introduced, these must align with the interpretations of human rights bodies, in order to guarantee that the due diligence framework maintains its legal integrity. Given the

⁸⁶ United Nations Treaty Collection. *Status of Treaties*, viewed May 2018, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en

⁸⁷ United Nations, 2018. *Concluding observations on the combined sixth and seventh periodic reports of Luxembourg*, Committee on the Elimination of Discrimination against Women, CEDAW/C/LUX/CO/6-7.

devastating impact of IPV on present and future generations and communities, it is recommended that the international community launches a dialogue and a forum of exchange of best preventative practices. It is also recommended that States fulfil the human rights obligations presented here and adhere to the due diligence framework, which has the potential of making a visible impact on the global prevalence of IPV.

3. Thesis summary

The present thesis has explored the normative content of States' due diligence obligations to prevent IPV. It has underlined essential preventative aspects such as the importance of risk-assessment, the indivisibility of human rights and the significance of intersectionality in IPV.

Chapter II introduced the notion of IPV and reflected upon the most preeminent explanations of the scholarship related to the motivations behind IPV, the different abusive manifestations it encompasses, the prevalence of IPV and the risk-factors associated with the phenomenon. The risk-factors model is used along the thesis to express that due diligence represents a conduct of the State characterised by *response to risk* and to portray that compliance with due diligence obligations requires paying special attention to an individual's environment (such as their relationships, community and personal, cultural and social characteristics).

Chapter III identified international human rights obligations to prevent IPV, originating from the International Bill of Rights. The analysis has evidenced how IPV can represent a violation of the right to life, of the prohibition of torture and ill-treatment, a violation of the right to not be discriminated, a violation of the right to be free from violence of children and people with disabilities, a violation of the rights of migrant workers, of the right to housing or the right to sexual and reproductive health. This chapter represents an unprecedented attempt of organising all the rights related to IPV and show how the prevention of this phenomenon represents a complex procedure, requiring compliance with multiple human rights that are indivisible and inter-connected.

Chapter IV has gone further, exploring IPV as an issue of children's rights and assessing how children can be exposed to, victimised by or perpetrate IPV. In all these scenarios, children's rights are obstructed and States must recognize that IPV is not only an issue that affects adults. The chapter argues that early interventions should start in childhood and to address

teen dating violence States should eliminate age barriers and enhance the procedural rights of children, empowering them as right holders to take action against abuse.

In Chapter V, I have discussed the nature of due diligence obligations and how they differ from or fit with the traditional dichotomy of positive and negative obligations. This chapter has also examined the idea of State responsibility for wrongful acts, revealing how due diligence obligations reflects the idea that omissions of State authorities elicit international responsibility, if those acts can be attributable to the State; and that passivity or reactivity represent State conducts that can attract or eliminate responsibility. Moreover, this chapter also examined notable human rights bodies decisions to glance due diligence in context and show how certain attitudes of the State ended up becoming violations of human rights or alternatively, how State conduct complies with human rights standards.

In Chapter VI, I have examined the content of the 5 Ps that constitute the due diligence framework. Anticipate prevention has been revealed to encompass changing societal attitudes related to IPV, addressing age and gender stereotypes, constructing laws that reflect formal equality, adopting policies that reflect substantive equality, establishing legal responsibility for authorities who fail to comply with IPV provisions and investing in education as a catalyst for building better community responses to IPV. At the same time, escalation mitigation has been examined and it includes, *inter alia*, accessible support services, training authorities that come in contact with IPV cases, the exploration of alternative punishments that seek to deter recidivism and the provision of proportional redress for victims of IPV. The chapter also examines the limits of due diligence interventions and emphasizes that individuals retain the freedom to continue or end a relationship. The limits of due diligence reflect that States are mandated with the obligation to end violence in a relationship, but not with a choice in the matter of the continuance of the relationship.

Finally, in the last chapter, I have presented various considerations for employing the due diligence framework and made valuable recommendations to States and the scholarship. These recommendations are aimed at all stakeholders in IPV and reflect the product of a deep familiarisation with the notion of IPV and the scholarship on the matter. I have suggested that the scholarship should remain open to the evolving nature of IPV and that States should incorporate in their legislation, provisions related to all forms of IPV, such as reproductive coercion, spiritual abuse, financial abuse as well as online abuse. I have also recommended

that in the fight against IPV, eliminating stereotypes and gravity bias is essential, as well as raising human rights awareness in broader communities and especially in State institutions. I have noted with concern that many countries lack this awareness, a fact confirmed by the latest concluding observations of human rights bodies. Finally, I have recommended that both the literature and States remain open to the intersectionality in IPV and explore the role of the perpetrator in due diligence and IPV prevention. An increased focus on short-term responses related to modifying aggressive behaviour or other alternatives to imprisonment and long-term interventions that ensure the abuse does not continue with a new partner, is needed.

4. Concluding remarks

“Democracy is not simply a license to indulge individual whims and proclivities. It is also holding oneself accountable to some reasonable degree for the conditions of peace and chaos that impact the lives of those who inhabit one’s beloved extended community” - *Aberjhani*

States have international human rights obligations to prevent intimate partner violence, in all its forms, before it occurs and reactively, once State authorities have become aware of the dangers it purports. It is important to notice, however, that the obligation of States to prevent IPV can be limited by the vary limits of the right IPV may constitute a violation of. At the same time, it can be observed that international human rights obligations to prevent IPV are conditional in the sense that they cannot burden the State to prevent every single occurrence of IPV. Many authors and practitioners have voiced that preventing all IPV occurrences would be both unrealistic and perhaps, impossible. In many instances, especially in regards to economic, social and cultural rights, States are required to take all appropriate measures to prevent IPV and in doing so, to utilise their available resources to the maximum. The appropriateness of the measures States adopt is ultimately examined and decided by the UN Committee invested with monitoring powers, as the concept of all appropriate measures surely does not imply a self-monitoring State conduct.⁸⁸ Additionally, utilising all available

⁸⁸ Griffey, B., 2011. The ‘reasonableness’ test: Assessing violations of state obligations under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. *Human rights law review*, 11(2), pp.275-327.

resources implies that in the policy-making process, States prioritise the rights in the Conventions and that UN Committees will evaluate if “the allocation of resources reflect[s] the prioritization of Covenant rights”.⁸⁹ Ultimately, the appropriateness of the adopted measures will have to stand the effectiveness test, which implies that State measures that fail to achieve the realisation of certain human rights will have to be deemed as inappropriate, according to each Convention’s standards.⁹⁰ The due diligence standard provides a reassurance that States’ obligations to prevent IPV are enforced, to the highest attainable standard. The content of the 5Ps, presented in detail throughout the thesis, represents all the appropriate measures that States can adopt to prevent IPV.

The thesis has underlined that in many cases, appropriate measures require thinking outside the box, adopting measures to target IPV in childhood, generating social equality, focusing on education and taking a lax approach to the conviction that over-penalisation is guaranteed to lower the prevalence for IPV. For international human rights law in general, due diligence obligations might be particularly challenging due to the fact that often, the conduct of State officials will require balancing various human rights of various individuals: the victim, the perpetrator, children. This, in turn, represents a challenge to the very notion of indivisibility of human rights reflected in the lack of hierarchy of human rights. At the same time, balancing acts are usually performed by the judiciary, retrospectively, and not other State actors mandated with protecting individuals against human rights violations. This means that due diligence obligations that refer to the conduct of a particular State agent must be, to the maximum extent possible, explicit. Due diligence obligations could require an enhanced mechanism to transpose human rights in national law and an additional focus on training the judiciary branch to think in human rights terms. Moreover, due diligence is a concept that requires legislative cohesion and using human rights protection in an anticipatory and harmonised way. Undoubtedly, this implies paying increased attention to guaranteeing and protecting economic, social and cultural rights, which in turn, can have a positive effect on the fulfilment of civil and political rights. IPV can provide the perfect example of how investing in human rights education, promoting equality and approaching the risk factors for IPV associated with mental health, can provide a long-term investment in diminish IPV prevalence and avoiding its escalation into a violation of civil and political rights.

⁸⁹ *id.*

⁹⁰ *id.*

It cannot be denied however, that prevention depends, at large, on the will of the State to allocate sufficient resources, to educate its agents about effective un-stereotypical responses, to empower individuals to hold States accountable and more importantly, to empower people to respect themselves, each other and take action against IPV. Due diligence obligations to prevent IPV are straightforward and require that State authorities respond to IPV without delays and with adequate interest, mobilising resources and available services to prevent the cycle of abuse from escalating. Authorities must be understanding of the difficult situations victims face and assist them in developing a safety plan while allowing survivors to maintain power and make their own decisions regarding the continuance of the relationship. The State must also be ready to tackle IPV in childhood and within LGBT groups, as well as offer legal responses to new forms of abuse, such as spiritual or cyber abuse. Due diligence plans aimed at compliance with human rights standards require time, resources and long-term commitments and might be applicable to similar societal issue, such as violence against children or elder abuse. With adequate implementation, the measures gathered here have the potential of significantly making a difference. By complying with the obligations gathered in this thesis, States can expect to lower IPV prevalence and improve the lives of those who are exposed to it.

As private individuals we all form, collectively, the abstract concept known as a State, a nation. We all share an immediate responsibility in resolving IPV and other similar societal problems, that confluence and generate suffering, loss, that devastate families and individuals. Communities can educate future generations on how to relate to other individuals, constantly educate themselves on how to live and how to love, how to trust the State and engage its authorities when witnessing violence, how to ask for help and how to offer help. Preventing IPV is reliant on the ability to exercise these civil duties and not turn a blind eye when witnessing this occurrence, whether between those close to us, at home, at work, or between complete strangers.

One weekend he was staying with us, he started drinking. We argued and I asked him to leave, he refused. I went to phone the police. He hit the phone out of my hands and pushed me to my knees. He put one hand around my throat and squeezed. I was able to break away and I ran out the front door. He caught up to me in the neighbour's garden, pushed me to the ground and started punching and kicking me. I thought he was going to kill me. A female voice called out that she

had called the police and he fled. I believe if it wasn't for the intervention of a stranger, I'd not be here today! ⁹¹

Every person can make a difference in preventing IPV, from school teachers, doctors, police officers, neighbours, friends, cousins or co-workers. Individuals must be helped to recognize the immense role they have in combating this occurrence and educated to use their human rights to demand accountability and transparency. Individuals must hold the State and each other accountable to build stronger families and communities, where violence is no longer a solution to conflict, a modality of communication, a tool of control.

⁹¹ Domestic Violence Resource Centre Victoria, n.d.. *Jane's story*, viewed May 2018, <https://www.dvrcv.org.au/stories/true-stories/stories-women/janes-story>

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